



IOWA ADMINISTRATIVE BULLETIN

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Filed Emergency, Attorney fee contracts; fee limitations, 7.1, 11.2, 11.5, 12.2(1)“c,” 12.5, 12.6 **ARC 9293B**. 995

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.

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NOTICE

Subscriptions to Agency Rule Making

2010 Iowa Acts, chapter 1031, section 58, requires that a state agency must submit a copy of all proposed rules to the chairpersons and ranking members of the appropriate standing committees of the General Assembly for additional study.

To comply with this new provision, the Legislative Services Agency, through its Computer Services Division, has developed an Internet application that provides the ability to subscribe to all the rule makings of a specified agency. The application has the following features:

- The subscriber may select as many agencies as desired.
- The subscription will include the edited and published version of notices of intended action, the adopted "emergency" rules, and the final adopted rules for the selected agency or agencies.
- The subscriber will receive a biweekly e-mail containing a brief description of each rule making and an Internet link to the document itself.

Please go to: <http://www.legis.state.ia.us/maillist/RuleAlert/> and enter your e-mail address, check the boxes for the agency or agencies you are interested in, and click the subscribe or unsubscribe button. You will automatically be sent an e-mail message; click on the "hot link" contained in that message to confirm and activate your subscription.

Schedule for Rule Making 2011

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Friday, January 7, 2011	January 26, 2011
16	Friday, January 21, 2011	February 9, 2011
17	Friday, February 4, 2011	February 23, 2011

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, monthly meeting on Tuesday, January 4, 2011, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ARCHITECTURAL EXAMINING BOARD[193B]

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

Intern development program supervisor—verification of hours of experience, 4.1(9)
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CITY DEVELOPMENT BOARD[263]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

Annexation requests; boundary adjustments; elections, 7.2(2), 7.8, 7.12, 10.1 Filed **ARC 9278B** 12/15/10

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Commission location and membership, 1.2 Notice **ARC 9271B** 12/15/10
Registered nurse and nurse educator loan forgiveness program, 34.3(5) Notice **ARC 9272B** 12/15/10
Teacher shortage loan forgiveness program, 35.4(3) Notice **ARC 9273B** 12/15/10

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Iowa jobs main street program, ch 40 Filed **ARC 9291B** 12/15/10

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Standard license—licensure and ethics orientation, 13.7 Notice **ARC 9305B** 12/29/10
Professional core—licensure and ethics orientation, 13.18(4) Notice **ARC 9302B** 12/29/10
Professional administrator license—licensure and ethics orientation, 18.5 Notice **ARC 9303B** 12/29/10
Renewal of a Class A license, 18.7(7) Notice **ARC 9306B** 12/29/10
Timely renewal, 20.3(6) Notice **ARC 9300B** 12/29/10
Professional administrator license—licensure and ethics orientation, 20.9(4) Notice **ARC 9304B** 12/29/10
Timely renewal, 27.7 Notice **ARC 9301B** 12/29/10

EDUCATION DEPARTMENT[281]

Open enrollment—supplementary weighting for concurrent enrollment classes, 17.10(8)
Filed **ARC 9261B** 12/15/10
Extracurricular interscholastic competition—open gym, 36.15(6)"c" Notice **ARC 9270B** 12/15/10
Special education, amendments to ch 41 Notice **ARC 9269B** 12/15/10
Pupil transportation, 43.25, 43.34, 43.38 Filed **ARC 9262B** 12/15/10
Type A-2 bus tow hooks, 44.3(7)"f" Filed **ARC 9263B** 12/15/10
Public charter and innovation zone schools, 68.1 to 68.7, 68.11 to 68.15 Filed **ARC 9264B** 12/15/10
Teacher and administrator quality programs—beginning administrator, 83.2 Filed **ARC 9265B** 12/15/10
Supplementary weighting plan, 97.2 Filed **ARC 9266B** 12/15/10
Financial management of categorical funding, amendments to ch 98 Filed **ARC 9267B** 12/15/10
Procedures for charging and investigating incidents of abuse by school employees,
amendments to ch 102 Notice **ARC 9268B** 12/15/10

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

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

References—examination applicants, 4.1(5) Filed **ARC 9285B** 12/15/10
Examination application—correct forms for references, 4.1(7)"a" Filed **ARC 9286B** 12/15/10
Structural engineering examination, 4.1(8)"b" Filed **ARC 9288B** 12/15/10
Comity application—correct forms for references, 4.2(1) Filed **ARC 9287B** 12/15/10

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Open feedlots and confinement feeding operations, amendments to chs 60, 63 to 65
Notice **ARC 9274B** 12/15/10

HUMAN SERVICES DEPARTMENT[441]

Family investment program (FIP) and Medicaid for noncitizens, 40.21, 41.23(5), 41.24(2)"f,"
41.26(9), 41.27(10), 41.30(3)"a," 75.11 Notice **ARC 9309B** 12/29/10
Iowa disaster aid and individual assistance grant program—vouchers, 58.2, 58.3, 58.5 to
58.7 Filed **ARC 9312B** 12/29/10
Iowans helping Iowans unmet needs disaster assistance program, 58.51 to 58.58 Filed **ARC 9313B** 12/29/10
Medicaid eligibility—purchase of annuities, 75.23(9) Notice **ARC 9277B** 12/15/10

Medicaid HCBS programs—provider qualifications updated, amendments to ch 77
Filed **ARC 9314B**..... 12/29/10
 Assertive community treatment, amendments to chs 77 to 79 Notice **ARC 9276B**..... 12/15/10
 Home health agency plan of care—physician signature, 78.9(1)“f” Filed **ARC 9315B**..... 12/29/10
 Enrollment limit for HCBS habilitation services, 78.27 Filed Emergency **ARC 9311B**..... 12/29/10
 Pharmacies administering influenza vaccine to children, 78.42, 79.1 Filed **ARC 9316B**..... 12/29/10
 Iowa juvenile home; state training school, chs 101, 103 Filed **ARC 9318B**..... 12/29/10

INSPECTIONS AND APPEALS DEPARTMENT[481]

Procedure for contested cases involving permits to carry weapons and acquire firearms, ch
 11 Notice **ARC 9298B**, also Filed Emergency **ARC 9299B**..... 12/29/10

IOWA FINANCE AUTHORITY[265]

2011 qualified allocation plan, 12.1, 12.2 Filed **ARC 9279B**..... 12/15/10
 HOME partnership program, 39.2 to 39.9 Filed **ARC 9284B**..... 12/15/10
 Iowans helping Iowans housing assistance program, ch 40 Filed **ARC 9280B**..... 12/15/10
 Shelter assistance fund, ch 41 Filed **ARC 9281B**..... 12/15/10
 Emergency shelter grants program, ch 42 Filed **ARC 9282B**..... 12/15/10

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

Contribution rates; administration of marital property orders; covered wage limits, 4.3, 4.6,
 6.1, 6.4(2), 16.2, 21.1(4) Notice **ARC 9310B**..... 12/29/10

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Pharmacy technicians, amendments to chs 3, 5 Notice of Termination **ARC 9296B**..... 12/29/10
 Pharmacy technicians—technical functions, 3.22 Notice **ARC 9297B**..... 12/29/10
 Unethical conduct or practice; confidential information; pharmacy license, 8.11, 8.16(3),
 8.35 Notice **ARC 9295B**..... 12/29/10

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Hearing aid dispensers, amend chs 121, 122, 124; adopt ch 123 Notice **ARC 9317B**..... 12/29/10
 Sign language interpreters and transliterators, 361.5(1) Notice **ARC 9259B**..... 12/15/10

PUBLIC SAFETY DEPARTMENT[661]

E-85 fuel dispensers, 221.4(2) Notice **ARC 9289B**, also Filed Emergency **ARC 9283B**..... 12/15/10

REVENUE DEPARTMENT[701]

Interest rate for calendar year 2011, 10.2(30) Filed **ARC 9308B**..... 12/29/10

SECRETARY OF STATE[721]

Direct recording electronic devices, amendments to chs 22, 26 Notice **ARC 9292B**..... 12/29/10

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Attorney fee contracts; fee limitations, 7.1, 11.2, 11.5, 12.2(1)“c,” 12.5, 12.6
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TRANSPORTATION DEPARTMENT[761]

Update of signing manual, 130.1 Notice **ARC 9290B**..... 12/15/10

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

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

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

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Emmetsburg, Iowa 50536

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

Representative Nathan Reichert
1155 Iowa Avenue
Muscatine, Iowa 52761

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

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

EDUCATIONAL EXAMINERS BOARD[282]

Standard license—licensure and ethics orientation, 13.7 IAB 12/29/10 ARC 9305B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Professional core—licensure and ethics orientation, 13.18(4) IAB 12/29/10 ARC 9302B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Professional administrator license—licensure and ethics orientation, 18.5 IAB 12/29/10 ARC 9303B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Renewal of a Class A license, 18.7(7) IAB 12/29/10 ARC 9306B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Timely renewal, 20.3(6) IAB 12/29/10 ARC 9300B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Professional administrator license—licensure and ethics orientation, 20.9(4) IAB 12/29/10 ARC 9304B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
Timely renewal, 27.7 IAB 12/29/10 ARC 9301B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.

EDUCATION DEPARTMENT[281]

Special education, amendments to ch 41 IAB 12/15/10 ARC 9269B	State Board Room, Second Floor Grimes State Office Bldg. East 14th and Grand Ave. Des Moines, Iowa	January 4, 2011 2 to 3 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. East 14th and Grand Ave. Des Moines, Iowa	January 11, 2011 2 to 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Open feedlots and confinement feeding operations, amendments to chs 60, 63 to 65 IAB 12/15/10 ARC 9274B	Room 115, Dairy Center Northeast Iowa Community College 1527 Highway 150 South Calmar, Iowa	January 4, 2011 6 p.m.
	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	January 5, 2011 6 p.m.
	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth, Iowa	January 6, 2011 6 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (cont'd)

Boardroom Clay County Administration Building 300 W. 4th Street Spencer, Iowa	January 10, 2011 6 p.m.
Fourth Floor Conference Room Wallace State Office Building 502 E. 9th Street Des Moines, Iowa	January 11, 2011 11 a.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Procedure for contested cases involving permits to carry weapons and acquire firearms, ch 11 IAB 12/29/10 ARC 9298B (See also ARC 9299B herein)	Administrative Hearings Div. Office Wallace State Office Bldg. Des Moines, Iowa	January 19, 2011 1 p.m.
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IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Contribution rates; administration of marital property orders; covered wage limits, 4.3, 4.6, 6.1, 6.4(2), 16.2, 21.1(4) IAB 12/29/10 ARC 9310B	7401 Register Dr. Des Moines, Iowa	January 18, 2011 9 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Hearing aid dispensers, amend chs 121, 122, 124; adopt ch 123 IAB 12/29/10 ARC 9317B	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	January 18, 2011 10 to 11 a.m.
Sign language interpreters and transliterators, 361.5(1) IAB 12/15/10 ARC 9259B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 4, 2011 9 to 9:30 a.m.

PUBLIC SAFETY DEPARTMENT[661]

E-85 fuel dispensers, 221.4(2) IAB 12/15/10 ARC 9289B (See also ARC 9283B)	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	January 4, 2011 9:30 a.m.
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STATE PUBLIC DEFENDER[493]

Attorney fee contracts, fee limitations, 7.1, 11.2, 11.5, 12.2(1), 12.5, 12.6 IAB 12/29/10 ARC 9294B (See also ARC 9295B herein)	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	January 21, 2011 9 a.m.
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TRANSPORTATION DEPARTMENT[761]

Update of signing manual,
130.1
IAB 12/15/10 **ARC 9290B**

First Floor South Conference Room
Department of Transportation
800 Lincoln Way
Ames, Iowa

January 6, 2011
10 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

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ARC 9305B

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 amendment will add a licensure and ethics orientation to the requirements for a standard license. This orientation will be offered in conjunction with the mentoring and induction training required to obtain a standard license. To obtain a standard license, out-of-state applicants will complete this in-depth orientation in lieu of the orientation required in the professional core requirements.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—13.7(272) as follows:

282—13.7(272) Specific requirements for a standard license. A standard license valid for five years may be issued to an applicant who:

1. Meets the general requirements set forth in subrule 13.5(1), ~~and~~
2. Shows evidence of successful completion of a state-approved mentoring and induction program by meeting the Iowa teaching standards as determined by a comprehensive evaluation and two years’ successful teaching experience. In lieu of completion of an Iowa state-approved mentoring and induction program, the applicant must provide evidence of three years’ successful teaching experience in an Iowa nonpublic school or three years’ successful teaching experience in an out-of-state K-12 educational setting-, and
3. Completes the licensure and ethics orientation offered and approved by the board of educational examiners. The orientation includes but is not limited to a discussion of rights and responsibilities, licensing requirements, and the code of professional conduct and ethics.

ARC 9302B**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 amendment will add a licensure and ethics orientation to the professional core so that all licensees will have the most recent information on licensure and ethics. This orientation will be approved and offered by the Board of Educational Examiners staff for graduates from Iowa institutions. Out-of-state applicants will have one year to complete the deficiency.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.18(4) as follows:

13.18(4) Professional education core. Completed coursework or evidence of competency in:

a. to *n.* No change.

o. Licensure and ethics orientation offered and approved by the board of educational examiners.

The orientation includes but is not limited to the discussion of rights and responsibilities, the code of professional conduct and ethics, and licensing requirements.

ARC 9303B**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 amendment will add a licensure and ethics orientation to the requirements for a professional administrator license. This orientation will provide updated rules information and reporting requirements. Out-of-state applicants will have one year to complete the deficiency.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

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 c. No change.

d. *Family and community.* An educational leader promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

(1) and (2) No change.

(3) Facilitates the connections of students and families to the health and social services that support a focus on learning-; and

18.5(3) Completes a licensure and ethics orientation offered and approved by the board of educational examiners. The orientation includes but is not limited to a discussion of rights and responsibilities, the code of professional conduct and ethics, licensing requirements, basic educational data survey (BEDS) information, and new hire application reviews.

ARC 9306B**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.

An applicant for a Class A license who is employed by an Iowa educational unit and who holds an expired administrator license because the applicant does not meet the renewal requirements will be required to have the signature of the applicant’s superintendent before the applicant’s license will be issued. If the superintendent does not meet the renewal requirements, the superintendent must secure the signature of the school board president. This amendment will address a situation in which the applicant has not completed the required credits for license renewal. In addition, this amendment will provide for the notification of employers when an employee has not completed renewal 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 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 18.7(7):

18.7(7) Renewal. The holder of an expired administrator license who is currently under contract with an Iowa educational unit (area education agency/local education agency/local school district) and who does not meet the renewal requirements for the administrator license held shall be required to secure the signature of the superintendent or designee before the license will be issued. If the superintendent does not meet the renewal requirements, the superintendent shall be required to secure the signature of the school board president before the license will be issued.

ARC 9300B**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 20, “Renewals,” Iowa Administrative Code.

This amendment will formalize what has been the Board’s policy for several years. A license is valid for only five years and may only be renewed less than one year before it expires. If a license could be renewed when more than one year remains on the license, then the licensee would hold the license for more than five years, which would be a violation of the Board’s policy.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 20.3(6):

20.3(6) *Timely renewal.* A license may only be renewed less than one year before it expires.

ARC 9304B**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 20, “Renewals,” Iowa Administrative Code.

This amendment will add a licensure and ethics orientation to the requirements for the renewal of the professional administrator license. This orientation will be a continuation of the ethics and licensure

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

training that is required to obtain the first professional administrator license. The orientation will be an update required during the term of each renewal.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** subrule 20.9(4):

20.9(4) Licensure orientation. An applicant renewing an administrator license must submit documentation of completion of the licensure and ethics orientation offered and approved by the board of educational examiners. The orientation includes but is not limited to a discussion of rights and responsibilities, the code of professional conduct and ethics, licensing requirements, basic educational data survey (BEDS) information, and new hire application reviews.

ARC 9301B

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 27, “Issuance of Professional Service Licenses,” Iowa Administrative Code.

This amendment will formalize what has been the Board’s policy for several years. A license is valid for only five years and may only be renewed less than one year before it expires. If a license could be renewed when more than one year remains on the license, then the licensee would hold the license for more than five years, which would be a violation of the Board’s policy.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, January 19, 2011, 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

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

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 21, 2011. 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, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Adopt the following **new** rule 282—27.7(272):

282—27.7(272) Timely renewal. A license may only be renewed less than one year before it expires.

ARC 9309B

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 sections 239B.4(6) and 249A.4, the Department of Human Services proposes to amend Chapter 40, “Application for Aid,” Chapter 41, “Granting Assistance,” and Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments update and clarify the Family Investment Program (FIP) and Medicaid rules on eligibility for persons who are not United States citizens. There has been frequent federal legislation in this area and development of federal regulations which necessitate changes to conform to federal funding requirements.

For the Family Investment Program (FIP), the amendments:

- Clarify that a FIP participant must be a citizen or national of the United States or a qualified alien and specify how applicants and participants attest to citizenship or alien status.
- Add definitions of “qualified alien” and “qualifying quarters” and clarify which qualified aliens are subject to a five-year bar on assistance and which are exempt from the bar.
- Require consideration of the income and resources of a sponsor when an alien has been sponsored by a person who executed an enforceable affidavit of support. Deeming of the sponsor’s income ends when the alien becomes a naturalized citizen, can be credited with 40 qualifying quarters of employment, or has been determined to be a battered alien or when the sponsor or the sponsored alien dies.
- Exempt the income and resources of a sponsor from consideration when the sponsored alien is considered indigent and define that determination.

For Medicaid, the amendments:

- Update the definitions of “care and services necessary for the treatment of an emergency medical condition,” “emergency medical condition,” and “qualified alien.”
- Clarify how qualified aliens become eligible for Medicaid.
- Add an exemption from verifying citizenship for a person born to a Medicaid-eligible mother and make technical corrections to clarify other exemptions from verifying citizenship.
- Define the deductions allowable in calculating the income and resources subject to sponsor-to-alien deeming when an alien is sponsored by a person who executed an enforceable affidavit of support.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Allow an exception to consideration of the income and resources of a sponsor when the sponsored alien is considered indigent and define that determination.
- Clarify that deeming of the sponsor's income does not apply when the sponsored alien is a child under age 21, is a battered alien, becomes a naturalized citizen, or can be credited with 40 qualifying quarters of employment. Deeming ends when the sponsor or the sponsored alien dies. For SSI-related Medicaid, deeming also ends when the sponsored alien becomes blind or disabled after admission to the United States. as a lawful permanent resident or three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.

These amendments do not provide for waivers in specified situations because the amendments are required by federal law or confer a benefit. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before January 18, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 239B.3, 239B.5, 239B.6, and 249A.3 and 8 United States Code Section 1641 as amended by the Immigration and Nationality Act, the Immigration Reform Act of 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Balanced Budget Act of 1997, the Trafficking Victims Protection Act of 2000, and the Children's Health Insurance Reauthorization Act of 2009.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **441—40.21(239B)**:

"Qualified alien" means an alien:

1. Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);
2. Who is granted asylum in the United States under Section 208 of the INA;
3. Who is a refugee admitted to the United States under Section 207 of the INA;
4. Who is paroled into the United States under Section 212(d)(5) of the INA for a period of at least one year;
5. Whose deportation from the United States is withheld under Section 243(h) of the INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010;
6. Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the INA as in effect before April 1, 1980;
7. Who is admitted to the United States as an Amerasian as described in 8 U.S.C. Section 1612(b)(2)(A)(ii)(V);
8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);
9. Who is a battered alien as described in 8 U.S.C. Section 1641(c); or
10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

"Qualifying quarters" means all of the qualifying quarters of coverage as defined under Title II of the Social Security Act that were worked by a parent of an alien while the alien was under the age of 18 and all of the qualifying quarters that were worked by a spouse of the alien during their marriage if the alien remains married to the spouse or the spouse is deceased. No qualifying quarter of coverage that is creditable under Title II of the Social Security Act for any period beginning after December 31, 1996, may be credited to an alien if the parent or spouse of the alien received any federal means-tested public benefit during the period for which the qualifying quarter is so credited.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 41.23(5) as follows:

41.23(5) *Citizenship and alienage.*

a. Eligible status. A family investment program assistance grant may include the needs of a citizen or national of the United States; or a qualified alien as defined at ~~8 United States Code Section 1641~~ rule 441—40.21(239B).

(1) A person who is a qualified alien as defined at ~~8 United States Code Section 1641~~ rule 441—40.21(239B) is not eligible for family investment program assistance for ~~five years~~. ~~The a~~ five-year period of ineligibility begins beginning on the date of the person's entry into the United States with a qualified alien status as ~~defined at 8 United States Code Section 1641~~.

(2) EXCEPTIONS: The five-year prohibition from family investment program assistance does not apply to: ~~battered aliens as described at 41.23(4), qualified aliens described in 8 United States Code Section 1612, or to qualified aliens as defined at 8 United States Code Section 1641 who entered the United States before August 22, 1996.~~

1. A qualified alien residing in the United States before August 22, 1996.
2. A battered alien as described at subrule 41.23(4).
3. A qualified alien veteran who has an honorable discharge that is not due to alienage.
4. A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.
5. A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in numbered paragraph "3" or "4," including a surviving spouse who has not remarried.
6. A refugee admitted under Section 207 of the Immigration and Nationality Act (INA).
7. An alien granted asylum under Section 208 of the INA.
8. An alien admitted as an Amerasian as described in 8 U.S.C. Section 1612(a)(2)(A)(ii)(V);
9. A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).
10. An alien whose deportation is withheld under Section 243(h) or Section 241(b)(3) of the INA.
11. An alien certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.
12. An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

~~(2) A person who is not a United States citizen, a battered alien as described at 41.23(4), or a qualified alien as defined at 8 United States Code Section 1641 is not eligible for the family investment program regardless of the date the person entered the United States.~~

b. Attestation of status. As a condition of eligibility, ~~each applicant shall attest to the applicant's citizenship or alien status by signing an attestation of citizenship or alien status shall be made for all applicants and recipients on Form 470-0462 or 470-0466~~ 470-0462(S), Health and Financial Support Application, or Form 470-2549, Statement of Citizenship Status. Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS), Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligible group. The attestation may be signed by:

(1) ~~The applicant or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf shall sign the form.;~~

(2) ~~An adult shall sign the form for dependent children. Form 470-2881, Review/Recertification Eligibility Document, may be used to attest to the citizenship of dependent children who enter a recipient household. Someone acting responsibly on the applicant's or recipient's behalf if the applicant or recipient is incompetent or incapacitated; or~~

(3) ~~Failure to sign a form attesting to citizenship when required to do so creates ineligibility for the entire eligibility group~~ Any adult member of the assistance unit, when eligibility is determined on a family or household basis.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend paragraph **41.24(2)“f”** as follows:

f. A person who is not a United States citizen and is not a qualified alien as defined in ~~8 United States Code Section 1641 or a battered alien as described at 41.23(4) rule 441—40.21(239B).~~

ITEM 4. Amend subrule 41.26(9) as follows:

41.26(9) Aliens sponsored by individuals. ~~Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the resources of the alien shall be deemed to include the resources of the sponsor (and of the sponsor’s spouse if living with the sponsor). The amount of the resources of the sponsor and the sponsor’s spouse deemed to the alien shall be the total countable resources as described in rule 441—41.26(239B) remaining after a \$1,500 deduction is subtracted. The following are exceptions to deeming of a sponsor’s resources:

a. Deeming of the sponsor’s resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);

or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor’s resources for 12 months after indigence is determined. An alien shall be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien’s gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien’s household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor’s resources for 12 months.

ITEM 5. Amend subrule 41.27(10) as follows:

41.27(10) Aliens sponsored by individuals. ~~Rescinded IAB 10/4/00, effective 12/1/00.~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an enforceable affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income of the alien shall be deemed to include the income of the sponsor (and of the sponsor’s spouse if living with the sponsor). The amount of the income of the sponsor and the sponsor’s spouse deemed to the alien shall be the total gross earned and unearned income remaining after allowing the earned income deduction described at paragraph 41.27(2)“a,” the work incentive disregard described at paragraph 41.27(2)“c,” and diversions described at subrule 41.27(4). The following are exceptions to deeming of a sponsor’s income:

a. Deeming of the sponsor’s income does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act;

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at rule 441—40.21(239B);

or

(3) The sponsored alien or the sponsor dies.

b. An indigent alien is exempt from the deeming of a sponsor’s income for 12 months after indigence is determined. An alien shall be considered indigent if:

(1) The alien does not live with the sponsor; and

(2) The alien’s gross income, including any income received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien’s household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor’s income for 12 months.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend paragraph **41.30(3)“a”** as follows:

a. Exclusions. Families with an adult as defined in subrule 41.30(1) who is not a U.S. citizen, ~~a battered alien as described at 41.23(4), or a qualified alien under 8 United States Code Section 1641 as described in subrule 41.23(5) as defined in rule 441—40.21(239B)~~ are prohibited from receiving more than 60 months of FIP assistance. The family of an adult who is a nonqualified alien cannot meet the requirements of paragraph “g” ~~of this subrule~~ since the department is precluded from using public funds to provide a nonqualified alien with family investment agreement or PROMISE JOBS services by Iowa Code sections 239B.8 and 239B.18 and rule 441—41.24(239B).

ITEM 7. Amend subrule **75.11(1)**, definitions of “Care and services necessary for the treatment of an emergency medical condition,” “Emergency medical condition” and “Qualified alien,” as follows:

“*Care and services necessary for the treatment of an emergency medical condition*” ~~shall mean~~ means services provided in a hospital, clinic, office or other facility that is equipped to furnish the required care ~~after the sudden onset of~~ for an emergency medical condition, provided the care and services are not related to an organ transplant procedure furnished on or after August 10, 1993. Payment for emergency medical services shall be limited to the day treatment is initiated for the emergency medical condition and the following two days.

“*Emergency medical condition*” ~~shall mean~~ means a medical condition of sudden onset (including labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in one or more of the following:

1. to 3. No change.

“*Qualified alien*” means an alien ~~who is~~:

1. ~~Lawfully~~ Who is lawfully admitted for permanent residence in the United States under the Immigration and Nationality Act (INA);

2. ~~Granted~~ Who is granted asylum in the United States under Section 208 of the Immigration and Nationality Act INA;

3. ~~A~~ Who is a refugee and who is admitted to the United States under Section 207 of the Immigration and Nationality Act INA;

4. ~~Paroled~~ Who is paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act INA for a period of at least one year;

5. ~~An alien whose~~ Whose deportation from the United States is being withheld under Section 243(h) of the Immigration and Nationality Act INA as in effect before April 1, 1997, or under Section 241(b)(3) of the INA as amended to December 20, 2010; or

6. ~~Granted~~ Who is granted conditional entry to the United States pursuant to Section 203(a)(7) of the Immigration and Nationality Act, INA as in effect prior to before April 1, 1980;

7. Who is an Amerasian admitted to the United States as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V);

8. Who is a Cuban/Haitian entrant to the United States as described in 8 U.S.C. Section 1641(b)(7);

9. Who is a battered alien as described in 8 U.S.C. Section 1641(c);

10. Who is certified as a victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010;

11. Who is an American Indian born in Canada to whom Section 289 of the INA applies or is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e); or

12. Who is under the age of 21 and is lawfully residing in the United States as allowed by 42 U.S.C. Section 1396b(v)(4)(A)(ii).

ITEM 8. Amend subrule 75.11(2) as follows:

75.11(2) Citizenship and alienage.

a. To be eligible for Medicaid, a person must be one of the following:

(1) and (2) No change.

(3) ~~An A~~ qualified alien child under the age of 19 who is lawfully admitted for permanent residence under the Immigration and Nationality Act 21.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(4) A refugee ~~who is~~ admitted to the United States under Section 207 of the Immigration and Nationality Act (INA).

(5) An alien who has been granted asylum under Section 208 of the ~~Immigration and Nationality Act~~ INA.

(6) An alien whose deportation is ~~being~~ withheld under Section 243(h) or Section 241(b)(3) of the ~~Immigration and Nationality Act~~ INA.

(7) to (10) No change.

(11) An Amerasian admitted as described in 8 U.S.C. Section 1612(b)(2)(A)(i)(V).

(12) A Cuban/Haitian entrant as described in 8 U.S.C. Section 1641(b)(7).

(13) A certified victim of trafficking as described in Section 107(b)(1)(A) of Public Law 106-386 as amended to December 20, 2010.

(14) An American Indian born in Canada to whom Section 289 of the INA applies or who is a member of a federally recognized Indian Tribe as defined in 25 U.S.C. Section 450b(e).

(15) An Iraqi or Afghan immigrant treated as a refugee pursuant to Section 1244(g) of Public Law 110-181 as amended to December 20, 2010, or to Section 602(b)(8) of Public Law 111-8 as amended to December 20, 2010.

b. As a condition of eligibility, each member shall complete and sign Form 470-2549, Statement of Citizenship Status, attesting to the member's citizenship or alien status. When the member is incompetent or deceased, the form shall be signed by someone acting responsibly on the member's behalf. An adult shall sign the form for dependent children.

(1) and (2) No change.

(3) An attestation of citizenship or alien status completed on any one of the following forms shall meet the requirements of subrule 75.11(2) for children under the age of 19 who are otherwise eligible pursuant to 441—subrule 76.1(8):

1. Application for Food Assistance, Form 470-0306 or 470-0307 (Spanish);

2. Health and Financial Support Application, Form 470-0462 or ~~470-0466 (Spanish)~~ 470-0462(S);

or

3. Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS);

c. No change.

d. Any one of the following documents shall be accepted as satisfactory documentation of citizenship or nationality:

(1) to (4) No change.

(5) Documentation issued by a federally recognized Indian Tribe showing membership or enrollment in or affiliation with that Tribe.

~~(5)~~ (6) Another document that provides proof of United States citizenship or nationality and provides a reliable means of documentation of personal identity, as the ~~secretary~~ Secretary of the U.S. Department of Health and Human Services may specify by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(B)(v).

e. No change.

f. A person for whom an attestation of United States citizenship has been made pursuant to paragraph "b" is not required to present documentation of citizenship or nationality for Medicaid eligibility if any of the following circumstances apply:

(1) to (3) No change.

(4) The person is a child in foster care who is eligible for assisted by child welfare services funded under Part B of Title IV of the federal Social Security Act.

(5) The person is eligible for adoption or receiving foster care maintenance or adoption assistance payments funded under Part E of Title IV of the federal Social Security Act; ~~or.~~

(6) No change.

(7) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1396a(e)(4) as the newborn of a Medicaid-eligible mother.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(8) The person is or was eligible for medical assistance pursuant to 42 U.S.C. Section 1397ll(e) as the newborn of a mother eligible for assistance under a State Children's Health Insurance Program (SCHIP) pursuant to Title XXI of the Social Security Act.

g. to i. No change.

ITEM 9. Amend subrule 75.11(3) as follows:

75.11(3) Deeming of sponsor's income and resources.

a. ~~In determining the eligibility and amount of benefits of~~ When an alien admitted for lawful permanent residence is sponsored by a person who executed an affidavit of support as described in 8 U.S.C. Section 1631(a)(1) on behalf of the alien, the income and resources of the alien shall be deemed to include the following:

(1) ~~The income and resources of any person who executed an affidavit of support pursuant to Section 213A of the Immigration and Nationality Act (as implemented by the Personal Responsibility and Work Reconciliation Act of 1996) on behalf of the alien.~~

(2) ~~The the income and resources of the sponsor (and the sponsor's spouse of the person who executed the affidavit of support, if living with the sponsor).~~ The amount deemed to the sponsored alien shall be the total gross countable income and resources of the sponsor and the sponsor's spouse for the FMAP-related or SSI-related coverage group applicable to the sponsored alien's household as described in 441—75.13(249A) less the following deductions:

(1) For FMAP-related coverage groups: The same income deductions, diversions, and disregards allowed for stepparent cases as described at 75.57(8) "b" and a \$1,500 resource deduction.

(2) For SSI-related coverage groups: The deductions described at 20 CFR 416.1166a and 416.1204, as amended to April 1, 2010.

b. ~~When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies. An indigent alien is exempt from the deeming of a sponsor's income and resources for 12 months after indigence is determined. An alien shall be considered indigent if the following are true:~~

(1) The alien does not live with the sponsor; and

(2) The alien's gross income, including any income actually received from or made available by the sponsor, is less than 100 percent of the federal poverty level for the sponsored alien's household size.

c. A battered alien as described in 8 U.S.C. Section 1641(c) is exempt from the deeming of a sponsor's income and resources for 12 months.

d. Deeming of the sponsor's income and resources does not apply when:

(1) The sponsored alien attains citizenship through naturalization pursuant to Chapter 2 of Title II of the Immigration and Nationality Act.

(2) The sponsored alien has earned 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with 40 qualifying quarters as defined at subrule 75.11(1).

(3) The sponsored alien or the sponsor dies.

(4) The sponsored alien is a child under age 21.

(5) For SSI-related Medicaid, the sponsored alien becomes blind or disabled as defined under Title XVI of the Social Security Act after admission to the United States as a lawful permanent resident.

(6) For SSI-related Medicaid, three years after the date the sponsored alien was admitted to the United States as a lawful permanent resident.

ARC 9298B

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 10A.801(7), the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 11, “Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms,” Iowa Administrative Code.

The new chapter implements provisions contained in 2010 Iowa Acts, Senate File 2379, section 14, requiring the Department to establish a procedural process through which Iowans who have been denied a permit to acquire firearms or carry weapons or whose permit has been suspended or revoked may appeal the decision of the sheriff or Commissioner of Public Safety to an administrative law judge.

Consideration will be given to all written suggestions or comments on the proposed rules on or before January 18, 2011. Such written materials should be sent to the Director’s Office, Department of Inspections and Appeals, Lucas State Office Building, Third Floor, Des Moines, Iowa 50319; fax (515)242-6863; or E-mailed to david.werning@dia.iowa.gov.

Also, there will be a public hearing on January 19, 2011, at 1 p.m. in the offices of the Administrative Hearings Division, Wallace State Office Building, 502 East Ninth 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.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9299B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2010 Iowa Acts, Senate File 2379, section 14.

ARC 9310B

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]

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 97B.4 and 97B.15, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 4, “Employers,” Chapter 6, “Covered Wages,” Chapter 16, “Domestic Relations Orders and Other Assignments,” and Chapter 21, “Mergers,” Iowa Administrative Code.

The proposed amendments implement new contribution rates for IPERS special service employers and members and clarify provisions for the administration of marital property orders.

The proposed amendments also clarify that IPERS determines covered wage limits under both Sections (A) and (B) of IRC Section 401(a)(17). The express references to Sections (A) and (B) were

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

inadvertently omitted when the rules were revised and republished in 2008. The related proposed changes correct that error.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before January 18, 2011. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to adminrule@ipers.org.

A public hearing will be held on January 18, 2011, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be required to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

The amendments to special service contributions were prepared after consultation with IPERS actuary, the Investment Board, the Benefits Advisory Committee, and IPERS administration. The remaining amendments were prepared in consultation with IPERS legal advisors and IPERS administration.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

The following amendments are proposed.

ITEM 1. Amend subrule 4.3(8) as follows:

4.3(8) Contributions paid on wages in excess of the annual covered wage maximum. For wages paid on or after July 1, 2008, whenever IPERS determines that an employee's wages will exceed the annual maximum established under Section 401(a)(17)(A) and the cost-of-living adjustments to that maximum permitted under Section 401(a)(17)(B) of the Internal Revenue Code during a given month, IPERS shall notify the applicable employer and shall return the related excess contributions. IPERS will detail on the monthly report those employees for whom wages were reported in excess of the covered wage ceiling. The employer is responsible for returning the employee's share of excess contributions and making the applicable tax corrections.

ITEM 2. Amend subrule 4.6(1) as follows:

4.6(1) Contribution rates for regular class members.

a. ~~Effective July 1, 2007, except as otherwise provided by law, the~~ The following contribution rates shall be effective for all covered members ~~except those identified in subrules 4.6(2) and 4.6(3) were established by the Iowa legislature for all regular class members for the indicated periods:~~

	Ended June 30, 2007	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010	Effective July 1, 2011
Combined rate	9.45%	9.95%	10.45%	10.95%	11.45%	13.45%
Employer	5.75%	6.05%	6.35%	6.65%	6.95%	8.07%
Employee	3.70%	3.90%	4.10%	4.30%	4.50%	5.38%

b. Effective July 1, ~~2011~~ 2012, and every year thereafter, the contribution rates for regular members shall be publicly declared by IPERS staff no later than the preceding December as determined by the annual valuation of the preceding fiscal year. The public declaration of contribution rates will be followed by rule making that will include a notice and comment period and that will become effective ~~no later than~~ July 1 of the next fiscal year.

ITEM 3. Amend subrule 4.6(2) as follows:

4.6(2) Contribution rates for sheriffs and deputy sheriffs are as follows.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010	Effective July 1, 2011
Combined rate	15.40%	15.04%	15.24%	17.88%	<u>19.66%</u>
Employer	7.70%	7.52%	7.62%	8.94%	<u>9.83%</u>
Employee	7.70%	7.52%	7.62%	8.94%	<u>9.83%</u>

ITEM 4. Amend subrule 4.6(3) as follows:

4.6(3) Contribution rates for protection occupation are as follows.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009	Effective July 1, 2010	Effective July 1, 2011
Combined rate	14.11%	14.08%	15.34%	16.59%	<u>16.62%</u>
Employer	8.47%	8.45%	9.20%	9.95%	<u>9.97%</u>
Employee	5.64%	5.63%	6.14%	6.64%	<u>6.65%</u>

ITEM 5. Amend rule 495—6.1(97B) as follows:

495—6.1(97B) IRS requirements. Wages as discussed in this chapter shall not exceed the amount permitted for a given year under ~~Section~~ Sections 401(a)(17)(A) and (B) of the Internal Revenue Code, which are incorporated herein by this reference.

ITEM 6. Amend subrule 6.4(2) as follows:

6.4(2) One quarter of service will be credited for each quarter in which a member is paid IPERS covered wages.

a. “Covered wages” means wages of a member during periods of service that do not exceed the annual covered wage maximum as permitted for a given year under ~~Section~~ Sections 401(a)(17)(A) and (B) of the Internal Revenue Code, which are incorporated herein by this reference.

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid by all covered employers shall be included in determining the annual covered wage limit established under ~~Section~~ Sections 401(a)(17)(A) and (B) of the Internal Revenue Code. If the amount of wages paid to a member by several employers during any given month exceeds the covered wage limit as determined for that calendar year, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. IPERS shall not accept excess wages and applicable contributions from employers and shall return excess contributions as provided in 495—subrule 4.3(8).

ITEM 7. Amend subparagraph **16.2(2)“a”(3)** as follows:

(3) Clearly specifies the period to which such order applies, ~~including whether benefits cease upon the death or remarriage of the alternate payee;~~

ITEM 8. Amend paragraph **16.2(3)“a”** as follows:

a. ~~Payment to an alternate payee shall be made in a like manner and at the same time that payment is made to the member.~~ IPERS uses the shared payment method for payments under a domestic relations order. Payment to the alternate payee shall be in a lump sum if the member’s benefits are paid in a lump sum distribution or as monthly payments if the member’s benefits are paid under a retirement option is in effect. A member shall not be able to receive an actuarial equivalent (AE) under Iowa Code section 97B.48(1) unless the total benefit payable with respect to that member meets the applicable requirements. All divisions of benefits shall be based on the gross amount of monthly or lump sum benefits payable. Federal and state income taxes shall be deducted from the member’s and alternate payee’s respective shares and reported under their respective federal tax identification numbers. Unrecovered basis shall be allocated on a pro rata basis to the member and alternate payee.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

ITEM 9. Amend subrule 21.1(4) as follows:

21.1(4) All wage records for current active members shall be summarized on the quarterly basis used by IPERS to determine a member's IPERS benefits. IPERS will not independently verify wage records; but will monitor those records to ensure that IRC ~~Section~~ Sections 401(a)(17)(A) and (B) limits are not exceeded.

ARC 9296B**PHARMACY BOARD[657]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 147.76 and 155A.6A, the Board of Pharmacy hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 8891B** on June 30, 2010.

The Board is terminating the Notice because the proposed amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on August 11, 2010, as **ARC 9009B**. The amendments became effective July 23, 2010. Numerous objections and comments regarding subrule 3.22(3) were received after the expiration of the initial comment period and after the emergency adoption. In response to those comments and objections, the Board suspended enforcement of the provisions of subrule 3.22(3) and reopened the comment period for the amendments published under Notice. An Amended Notice of Intended Action was published in the October 6, 2010, Iowa Administrative Bulletin as **ARC 9115B**.

Following the hearing before the Administrative Rules Review Committee, the Committee issued an objection to subrule 3.22(3) regarding functions that may be performed by uncertified pharmacy technicians. Following consideration of all comments received, the Board decided, at its teleconference meeting on November 24, 2010, to terminate the original Notice of Intended Action and to file a new Notice of Intended Action proposing substantive amendments to rule 657—3.22(155A). That Notice of Intended Action is published herein as **ARC 9297B**.

ARC 9297B**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 155A.6A, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 3, “Pharmacy Technicians,” Iowa Administrative Code.

The amendment was approved at the November 24, 2010, teleconference meeting of the Board of Pharmacy.

The proposed amendment identifies the technical functions that may be delegated by a supervising pharmacist to a pharmacy technician trainee or an uncertified pharmacy technician and clarifies that the functions that are identified in Chapter 5 that may be delegated to a pharmacy support person may also be delegated to a pharmacy technician.

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 amendment not later than 4:30 p.m. on January 24, 2011. Such written materials may be sent to Terry

PHARMACY BOARD[657](cont'd)

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.

This amendment is intended to implement Iowa Code section 155A.6A as amended by 2010 Iowa Acts, House File 2531, section 112.

The following amendment is proposed.

Amend rule 657—3.22(155A) as follows:

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, the following technical functions, in addition to any of the functions authorized for a pharmacy support person pursuant to 657—Chapter 5, may be delegated to a pharmacy technician as specified in the following subrules.

3.22(1) Certified pharmacy technician. Under the supervision of a pharmacist, a certified pharmacy technician may perform technical functions delegated by the supervising pharmacist including, but not limited to, the following:

- a. Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.
- b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.
- c. Contact prescribers to obtain prescription refill authorizations.
- d. Process pertinent patient information, including information regarding allergies and disease state.
- e. Enter prescription and patient information into the pharmacy computer system.
- f. Inspect drug supplies provided and controlled by an Iowa-licensed pharmacy but located or maintained outside the pharmacy department, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital patient care unit, or a hospice facility.
- g. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.
- h. Prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.
- i. Perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.
- j. Perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.
- k. As provided in rule 657—3.24(155A), accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent.

3.22(2) Pharmacy technician trainee and uncertified pharmacy technician. Under the supervision of a pharmacist, a pharmacy technician trainee or an uncertified pharmacy technician may perform only the following technical functions delegated by the supervising pharmacist:

- a. Perform packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.
- b. Accept prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.
- c. Contact prescribers to obtain prescription refill authorizations.
- d. Process pertinent patient information, including information regarding allergies and disease state.
- e. Enter prescription and patient information into the pharmacy computer system.
- f. Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.
- g. Prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.

PHARMACY BOARD[657](cont'd)

h. Under the supervision of a pharmacist who provides training and evaluates and monitors trainee competence in the compounding processes, perform drug compounding processes for nonsterile compounding as provided in 657—Chapter 20.

i. Under the supervision of a pharmacist who provides training and evaluates and monitors trainees, and contingent on successful completion of appropriate media fill testing processes, perform drug compounding processes for sterile compounding as provided in 657—Chapter 13.

~~3.22(3) *Uncertified pharmacy technician.* Under the supervision of a pharmacist, an uncertified pharmacy technician may perform technical functions delegated by the supervising pharmacist limited to the following:~~

~~*a.*—Select the appropriate stock supply of a prescription drug from the pharmacy drug supply shelves to process a prescription drug order.~~

~~*b.*—Count dosage forms of prescription drugs into appropriate prescription vials or containers pursuant to prescription drug orders. Uncertified pharmacy technicians shall not prepackage or label multidose and single-dose packages of drugs, including dose picks for unit dose cart or AMDS fills for hospital or long-term care facility patients.~~

~~*c.*—Affix required prescription labels upon any container of drugs sold or dispensed pursuant to the prescription of an authorized prescriber.~~

~~*d.*—Return or place stock supplies of prescription drugs in the appropriate locations on the pharmacy drug supply shelves.~~

ARC 9295B

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendments were approved at the November 24, 2010, teleconference meeting of the Board of Pharmacy.

The proposed amendments add pharmacy technicians, pharmacy support persons, and pharmacist-interns to those regulated individuals subject to activities identified as unethical conduct and prohibit any purchasing pharmacy or pharmacist from engaging in any activity or agreeing to any provision in a transaction for the sale or transfer of prescription records that would prevent or prohibit prior patient notification of a pending transfer of the patient’s records. Proposed new paragraph 8.16(3)“e” provides that a closing pharmacy may transfer prescription and patient records to a pharmacy that agrees to act as the custodian of the transferred records and that is subject to the same confidentiality standards of the originating pharmacy. Proposed amendments to subrule 8.35(6) add catchwords to identify the paragraphs and clarify the applicable rule provisions in the event of a change of owner of a pharmacy.

The proposed amendments to subrule 8.35(7) relate to the responsibilities of the pharmacies when a pharmacy closes. Those responsibilities include: notifications by the closing pharmacy to the Board and the federal Drug Enforcement Administration (DEA) at least four weeks prior to the pharmacy closing and the content of those notifications; notification to the pharmacist in charge of the closing pharmacy at least 60 days prior to the pharmacy closing and including the pharmacist in charge in the notification and closing processes; notification to patients of the closing pharmacy at least four weeks prior to the date of closing, including in such notification information regarding a patient’s right to transfer the patient’s records to a pharmacy of the patient’s choosing, and addressing direct communication to patients and

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the posting of signs or other public notices; notification to the pharmacist in charge of the receiving pharmacy at least four weeks prior to the pharmacy closing and restricting the receiving pharmacy from contacting patients prior to the transfer of patient records and the closure of the closing pharmacy; and requiring cancellation or revocation of all authorities to utilize the DEA's online controlled substances ordering system on behalf of the closing pharmacy. The proposed amendments also require that the closing pharmacy ensure the transfer of all patient records to a pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian for the closing pharmacy's records for the retention periods required under federal and state laws, rules, and regulations.

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 24, 2011. 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.

These amendments are intended to implement Iowa Code sections 147.55 and 155A.13.

The following amendments are proposed.

ITEM 1. Amend rule 657—8.11(147,155A) as follows:

657—8.11(147,155A) Unethical conduct or practice. The provisions of this rule apply to licensed pharmacies, licensed pharmacists, registered pharmacy technicians, registered pharmacy support persons, and registered pharmacist-interns.

8.11(1) *Misrepresentative deeds.* A pharmacist, technician, support person, or pharmacist-intern shall not make any statement intended to deceive, misrepresent or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

8.11(2) *Undue influence.*

a. No change.

b. ~~The prohibition in paragraph “a” shall not apply until April 23, 2006, to a pharmacist who is working at a prescriber-owned pharmacy location licensed as of April 23, 1981.~~

e. b. A prescriber may employ a pharmacist to provide nondispensing, drug information, or other cognitive services.

8.11(3) No change.

8.11(4) *Nonconformance with law.* A pharmacist, technician, support person, or pharmacist-intern shall not knowingly serve in a pharmacy which is not operated in conformance with law, or which engages in any practice which if engaged in by a pharmacist would be unethical conduct.

8.11(5) *Freedom of choice/solicitation/kickbacks/fee-splitting and imprinted prescription blanks or forms.* A pharmacist or pharmacy shall not enter into any agreement which negates a patient's freedom of choice of pharmacy services. A purchasing pharmacist or pharmacy shall not engage in any activity or include in any agreement with a selling pharmacist or pharmacy any provision that would prevent or prohibit the prior notifications required in subrule 8.35(7). A pharmacist or pharmacy shall not participate in prohibited agreements with any person in exchange for recommending, promoting, accepting, or promising to accept the professional pharmaceutical services of any pharmacist or pharmacy. “Person” includes an individual, corporation, partnership, association, firm, or other entity. “Prohibited agreements” includes an agreement or arrangement that provides premiums, “kickbacks,” fee-splitting, or special charges as compensation or inducement for placement of business or solicitation of patronage with any pharmacist or pharmacy. “Kickbacks” includes, but is not limited to, the provision of medication carts, facsimile machines, any other equipment, or preprinted forms or supplies for the exclusive use of a facility or practitioner at no charge or billed below reasonable market rate. A pharmacist shall not provide, cause to be provided, or offer to provide to any person authorized to prescribe prescription blanks or forms bearing the pharmacist's or pharmacy's name, address, or other means of identification, except that a hospital may make available to hospital staff prescribers, emergency department prescribers, and prescribers granted hospital privileges for the prescribers' use

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during practice at or in the hospital generic prescription blanks or forms bearing the name, address, or telephone number of the hospital pharmacy.

8.11(6) to 8.11(8) No change.

ITEM 2. Amend subrule 8.16(3) as follows:

8.16(3) Exceptions. Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

a. Transferring a prescription to another pharmacy upon the request of the patient or the patient's authorized representative.

b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.

c. Providing drug therapy information to physicians or other authorized prescribers for their patients.

d. Disclosing information necessary for the processing of claims for payment of health care operations or services.

e. Transferring, subject to the provisions of subrule 8.35(7), prescription and patient records of a pharmacy that discontinues operation as a pharmacy to another licensed pharmacy that is held to the same standards of confidentiality and that agrees to act as custodian of the transferred records.

ITEM 3. Amend subrule 8.35(6) as follows:

8.35(6) Pharmacy license changes. When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

a. Location. A change of pharmacy location in Iowa shall require an on-site inspection of the new location as provided in subrule 8.35(5) if the new location was not a licensed pharmacy immediately prior to the relocation.

b. Ownership. A change of ownership of a currently licensed Iowa pharmacy, or a change of pharmacy location to another existing Iowa pharmacy location, shall not require on-site inspection pursuant to subrule 8.35(5). A new pharmacy license is required as provided ~~above~~ in this subrule. A change of ownership effectively consists of a closing pharmacy, which is subject to the requirements for a closing pharmacy, and of a new pharmacy, which is subject to the requirements of a new pharmacy, with the possible exception of the on-site inspection as provided by this paragraph. In those cases in which the pharmacy is owned by a corporation, the sale or transfer of all stock of the corporation does not constitute a change of ownership provided the corporation that owns the pharmacy continues to exist and continues to own the pharmacy following the stock sale or transfer.

c. Pharmacist in charge. A change of pharmacist in charge shall require completion and submission of the application and fee for new pharmacy license.

(1) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge, signed by the pharmacy owner or corporate officer and the temporary pharmacist in charge, shall be submitted to the board within 10 days following the vacancy.

(2) Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

ITEM 4. Amend subrule 8.35(7) as follows:

8.35(7) Pharmacy closing Closing pharmacy. ~~At least two weeks prior to the closing of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement Administration (DEA) notifying those agencies of the intent to discontinue business or sell the pharmacy including the anticipated date of sale or closing. A closing pharmacy shall ensure that all patient and prescription records are transferred to another pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian of the records for the appropriate retention period for each record type as~~

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required by federal or state laws, rules, or regulations. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy closing for delivery of the notifications to the pharmacist in charge, the board, the Drug Enforcement Administration (DEA), and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

a. *Pharmacist in charge notification.* At the first indication of a pending sale or at the commencement of negotiations regarding the sale or purchase of a pharmacy but not less than 60 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the closing pharmacy, if that individual is not an owner of the closing pharmacy, shall be notified of the proposed sale. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and time lines established by this subrule. The pharmacist in charge of the closing pharmacy shall prepare patient notifications pursuant to paragraph "d" of this subrule. At least four weeks prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the purchasing or receiving pharmacy, if that individual is not an owner of the pharmacy, shall be notified of the pending transaction.

a. b. *Board and DEA notifications.* ~~Prior notification~~ At least four weeks prior to the closing of a pharmacy, including a closing by sale of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement Administration (DEA) notifying those agencies of the intent to discontinue business or to sell the pharmacy and including the anticipated date of closing. These prior notifications shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. ~~Notification~~ Notifications shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

b. c. *Terms of sale or purchase.* ~~Pharmacy patients with active prescriptions on file with a pharmacy that intends to close permanently shall be notified by that pharmacy, via direct mail or public notice at least two weeks prior to the closure of the pharmacy, that each patient has the right to transfer the patient's active prescriptions to a pharmacy of the patient's choosing. This paragraph shall not apply in the case of an emergency or unforeseeable closure including, but not limited to, emergency board action, foreclosure, fire, or natural disaster. If the closing is due to the sale of the pharmacy, a copy of the sale or purchase agreement, not including information regarding the monetary terms of the transaction, shall be submitted to the board with the initial notification of the closing of a pharmacy. The agreement shall include a written assurance from the closing pharmacy to the purchasing pharmacy that the closing pharmacy has given notice to its patients as required by this subrule.~~

d. *Patient notification.* At least four weeks prior to closing, a closing pharmacy shall make a reasonable effort to notify all patients who had a prescription filled by the closing pharmacy within the last 18 months that the pharmacy intends to close, including the anticipated closing date.

(1) Written notification shall identify the pharmacy that will be receiving the patient's prescriptions and records, shall include information on the rights of the patient to transfer current prescriptions and patient records to a pharmacy of the patient's choosing including information on how such transfer may be accomplished, and shall include a form that may be completed by the patient and submitted to the closing pharmacy to facilitate transfer of the patient's prescriptions and records to a pharmacy of the patient's choosing.

(2) Written notification shall be delivered to each patient at the patient's last address on file with the closing pharmacy by direct mail or personal delivery and also by public notice. Public notice refers to the display, in a location and manner clearly visible to patients, of signs in pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, or at pharmacy prescription counters. In addition, notice may be posted on the pharmacy's Web site, displayed

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on a marquee or electronic sign, communicated via automated message on the pharmacy's telephone system, or published in one or more local newspapers or area shopper publications.

e. Patient communication by receiving pharmacy. A pharmacy receiving the patient records of another pharmacy shall not contact the patients of the closing pharmacy until after the transfer of those patient records from the closing pharmacy to the receiving pharmacy and after the closure of the closing pharmacy. The receiving pharmacy shall post or publish notice to patients of their right to transfer current prescriptions and patient records to a pharmacy of the patient's choosing, including information on how such transfer can be accomplished. A notice posted at the receiving or purchasing pharmacy shall be maintained for a minimum 90 days following the transfer of patient records from the closing pharmacy.

e.f. Prescription drug inventory. A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be included in the records of each licensee.

(1) to (5) No change.

d. g. Surrender of certificates and forms. The pharmacy license certificate and CSA registration certificate of the closing ~~or selling~~ pharmacy shall be returned to the board office within ten days of closing ~~or sale~~. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA within ten days of closing. All authorizations to utilize the DEA controlled substances online ordering system (CSOS) and all digital certificates issued for the purpose of ordering controlled substances for the closing pharmacy shall be canceled or revoked within ten days of closing.

e. h. Signs at closed pharmacy location. A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy. Nothing in this paragraph shall prohibit the display of a public notice to patients, as required in paragraph "b," for a reasonable period not to exceed six months following the pharmacy closing.

ARC 9317B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Hearing Aid Dispensers hereby gives Notice of Intended Action to amend Chapter 121, “Licensure of Hearing Aid Dispensers,” and Chapter 122, “Continuing Education for Hearing Aid Dispensers,” to adopt new Chapter 123, “Practice of Hearing Aid Dispensing,” and to amend Chapter 124, “Discipline for Hearing Aid Dispensers,” Iowa Administrative Code.

These proposed amendments clarify the requirements for submission of supervision reports by temporary permit holders; rescind the requirement for mailing a renewal notice that is outdated given the current on-line renewal system; provide clarity in practice requirements, consistent with Iowa law and federal regulations; and revise the continuing education requirements by updating the definition of “independent study,” adding a new requirement for ethics coursework, increasing the hours allowed for independent study and on-line coursework, and providing credit for mandatory reporter training.

Any interested person may make written comments on the proposed amendments no later than January 25, 2011, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail sdozier@idph.state.ia.us.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

A public hearing will be held on January 18, 2011, from 10 to 11 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154A and 272C.

The following amendments are proposed.

ITEM 1. Amend paragraph **121.3(1)“g”** as follows:

g. Submit, on a board-approved form, a ~~final, completed~~ supervision report for trainees prior to taking the board-approved examination. A supervision report is required each time the temporary permit holder submits a request to take the examination.

ITEM 2. Amend subrule 121.4(6) as follows:

121.4(6) Examination candidates who hold a temporary permit are required to ~~have~~ submit a completed supervisory report in accordance with paragraph 121.3(1)“g.”

ITEM 3. Amend subrule 121.9(1) as follows:

121.9(1) The biennial license renewal period for a license to dispense hearing aids shall begin on January 1 of each odd-numbered year and end on December 31 of the next even-numbered year. All licensees shall renew on a biennial basis. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.~~

ITEM 4. Amend rule ~~645—122.1(154A)~~, definition of “Independent study,” as follows:

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules ~~and includes a posttest.~~

ITEM 5. Amend subrule 122.2(1) as follows:

122.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on January 1 of each odd-numbered year and ending on December 31 of the next even-numbered year. Each biennium, each person who is licensed to practice as a hearing aid dispenser in this state shall be required to complete a minimum of 32 hours of continuing education approved by the board. For the 2011-2012 compliance period for license renewal on January 1, 2013, and every renewal biennium thereafter, a minimum of 2 hours shall be in the content areas of Iowa hearing aid dispenser law and rules, or ethics.

ITEM 6. Amend paragraph **122.3(2)“b”** as follows:

b. ~~A maximum of 4 hours of credit for telnet courses. Independent study telnet courses are acceptable only when an on-site monitor is present. A maximum of 8 hours of credit may be obtained by independent study, including on-line instruction. Independent study hours are subject to the requirements stated in the rules in this chapter and in 645—Chapter 4.~~

ITEM 7. Adopt the following **new** paragraph **122.3(2)“d”**:

d. Mandatory reporter training, as specified in 645—subrule 121.9(4). Hours reported for credit shall not exceed the hours required for compliance.

ITEM 8. Adopt the following **new** 645—Chapter 123:

CHAPTER 123
PRACTICE OF HEARING AID DISPENSING

645—123.1(154A) Definitions. For the purposes of these rules, the following definitions apply:

“Health history” means a series of questions pertaining to all of the following: client hearing needs and expectations; communication issues; otological conditions; medications; and previous amplification.

“Hearing aid fitting” means any of the following: the measurement of human hearing by any means for the purpose of selections, adaptations, and sales of hearing aids, and the instruction and counseling

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

pertaining thereto, and demonstration of techniques in the use of hearing aids, and the making of earmold impressions as part of the fitting of hearing aids.

“*Sales receipt*” means a written record that is provided to a person who purchases a hearing aid, that complies with these rules, and that is signed by the purchaser and the licensed hearing aid dispenser. The requirements for the sales receipt may be found in rule 645—123.3(154).

645—123.2(154A) Requirements prior to sale of a hearing aid.

123.2(1) No hearing aid shall be sold to an individual 18 years of age or older unless the individual:

a. Provides a health history to a licensed hearing aid dispenser who is responsible for reducing the history to written form;

b. Presents a physician statement verifying that a medical evaluation, preferably by a physician specializing in diseases of the ear, has been done within the previous six months and stating the individual’s hearing loss and that the individual may benefit from a hearing aid. In lieu of this requirement, the individual may verify in writing that the individual has been informed that it is in the individual’s best health interests to obtain a medical evaluation by a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician, and that the individual chooses to waive said evaluation; and

c. Is given a hearing examination that utilizes appropriate established procedures and instrumentation for the measurement of hearing and the fitting of hearing aids and that includes, but is not limited to, an assessment of the following: air conduction; bone conduction; masking capability; speech reception thresholds; speech discrimination; uncomfortable loudness levels (UCL) and most comfortable levels (MCL). An examination that includes these procedures within the past 12 months shall be an exception to this requirement if the procedures and results are documented in the client record.

123.2(2) Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual’s best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

- a.* Visible congenital or traumatic deformity of the ear.
- b.* History of, or active drainage from the ear within the previous 90 days.
- c.* History of sudden or rapidly progressive hearing loss within the previous 90 days.
- d.* Acute or chronic dizziness.
- e.* Unilateral hearing loss of sudden or recent onset within the previous 90 days.
- f.* Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).
- g.* Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

123.2(3) Testing shall not be required in cases in which replacement hearing aids of the same make or model are sold within one year of the original sale.

123.2(4) Except as otherwise provided in these rules, for individuals younger than 18 years of age, all of the requirements stated in these rules are applicable. In addition, the following are required:

a. Written authorization of a parent or legal guardian consenting to the services covered in these rules, and

b. An original signature on all documents required by law or these rules to be signed, including but not limited to, all sales transactions and receipts, required notifications, and warranty agreements.

123.2(5) For individuals 12 years of age or younger, all of the requirements stated in these rules are applicable. In addition, the parent or legal guardian must first present a written, signed recommendation for a hearing aid from a licensed physician specializing in otolaryngology. The recommendation must

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

have been made within the preceding six months. A replacement of an identical hearing aid within one year shall be an exception to this requirement.

645—123.3(154A) Requirements for sales receipt. Upon sale of a hearing aid device, the licensee shall provide to the person a sales receipt, which shall include the following:

1. Licensee's signature.
2. Licensee's business address.
3. Licensee's license number.
4. Client signature and address.
5. Make, model, and serial number of the hearing aid furnished.
6. Statement to the effect that the aid or aids delivered to the purchaser are used or reconditioned, if that is the fact.
7. Full terms of sale, including:
 - The date of sale;
 - Specific warranty terms, including whether any extended warranty is available through the manufacturer;
 - Specific return policy; and
 - Whether any trial period is available.
8. The following statement in type no smaller than the largest used in the body copy portion of the receipt: "The purchaser has been advised that any examination or representation made by a licensed hearing aid dispenser in connection with the fitting or selection and selling of this hearing aid is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and therefore, must not be regarded as medical opinion or advice."

645—123.4(154A) Requirements for record keeping. A licensee shall keep and maintain records in the licensee's office or place of business for a seven-year period.

123.4(1) The records for each person shall include:

- a. A complete record of each test performed and the results of the test.
- b. A copy of any written recommendations.
- c. A copy of medical clearances or waivers.
- d. A copy of the written sales receipt.
- e. A copy of terms of sale, including any warranty.
- f. A written record of any adjustments or services provided on the hearing aid device, including whether such services were provided under warranty or other agreement.

123.4(2) No less than 30 days prior to closure of a licensee's business, the licensee shall provide written notification to clients of the location at which records will be maintained for a period of no less than 30 days following closure and the procedure to obtain those records. The licensee may arrange the transfer of records to another licensee for the purpose of maintenance of the records, provided that all contractual agreements have been satisfied.

These rules are intended to implement Iowa Code chapter 154A.

ITEM 9. Amend subrule 124.2(6) as follows:

124.2(6) Failure to place ~~the hearing aid dispenser's name, office address, and telephone number~~ all of the following in an advertisement relating to hearing aids:;

- a. Hearing aid dispenser's name.
- b. Hearing aid dispenser's office address.
- c. Hearing aid dispenser's telephone number.
- d. The qualifying words in the same size type as the title of the business: "for the purpose of fitting, selection, adaption, and sale of hearing aids." However, the qualifying words are not required if the advertisement includes the words "hearing test," "hearing evaluation," "free hearing test," "free hearing evaluation," "hearing measurement," or "free hearing measurement," and the title of the business which is advertising appears in the advertisement and includes the words "hearing aid."

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 10. Amend subrule 124.2(9) as follows:

124.2(9) Except in cases of selling replacement hearing aids of the same make or model within one year of the original sale, a hearing aid shall not be sold without adequate diagnostic testing and evaluation using established procedures to assess hearing needs as defined in 645—Chapter 123. Instruments shall be calibrated to current standards at least annually or more often if necessary. The distributor shall keep with the instruments a certificate indicating the date of calibration. ~~“Established procedures” means use of pure tone air conduction and bone conduction and speech audiometry.~~

ARC 9292B

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 22, “Voting Systems,” and Chapter 26, “Counting Votes,” Iowa Administrative Code.

These proposed amendments remove obsolete references to direct recording electronic devices or DREs, which were eliminated as an option for county use by 2008 Iowa Acts, Senate File 2347, codified in Iowa Code section 52.2.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 18, 2011. Written suggestions or comments should be directed to Sarah Reisetter, Elections Director, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s Office by telephone at (515)281-0145 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by January 18, 2011.

These amendments are intended to implement Iowa Code section 52.2.

The following amendments are proposed.

ITEM 1. Amend rule **721—22.1(52)**, definitions of “Vendor” and “Voting machine,” as follows:

“Vendor” means a person or representative of a person owning or being interested in ~~a voting machine or an~~ optical scan voting system and seeking certification of the equipment for use in elections in Iowa.

~~*“Voting machine”* means a direct recording electronic device.~~

ITEM 2. Amend rule 721—22.2(52) as follows:

721—22.2(52) Voting system standards. All electronic voting systems ~~and machines~~ approved for use by the board of examiners after April 9, 2003, shall meet Voting Systems Performance and Test Standards, as adopted by the Federal Election Commission April 30, 2002. The report of an accredited independent test authority certifying that the system is in compliance with these standards shall be submitted with the application for examination.

This rule is intended to implement Iowa Code section 52.5.

ITEM 3. Rescind and reserve subrule **22.5(8)**.

ITEM 4. Amend subrule 22.14(1) as follows:

22.14(1) The absence of any feature required by Iowa Code section 52.5 ~~or 52.7 for voting machines,~~ or section 52.26 ~~for electronic voting systems.~~

SECRETARY OF STATE[721](cont'd)

ITEM 5. Rescind and reserve rule **721—22.32(52)**.

ITEM 6. Amend subparagraph **22.261(2)“d”(3)** as follows:

(3) Certification text to appear at the end of the poll report:

We, the undersigned Precinct Election Officials of this precinct, hereby attest that this tape shows the results of all ballots cast and counted by the M100 Optical Scan tabulation device at this election. This is ~~[not] the complete record of the ballots in the precinct. [Another set of results from the iVotronic direct recording electronic voting machine device must be added to these results for the complete results of this precinct.]~~

[print lines for each of the officials to sign]

Precinct Election Officials Date: _____ Time: _____

ITEM 7. Amend rule **721—26.1(49)**, definitions of “Paper ballot” and “Voting machine,” as follows:

“Paper ballot” as used in this chapter means a ballot that is intended to be counted only after inspection by precinct election officials. “Paper ballot” in this context ~~includes:~~ means

- 1. ~~An emergency paper ballot cast in a precinct that has voting machines;~~
- 2. ~~An absentee ballot designed to be inspected by precinct election officials, then entered manually on the voting machine;~~
- 3. ~~A a ballot provided at a precinct that has neither voting machines nor~~ does not have optical scan voting equipment.

“Voting machine” ~~means a mechanical or electronic device meeting the requirements of Iowa Code section 52.7 as amended by 2004 Iowa Acts, Senate File 2269, section 27, and designated for use in casting, registering, recording, and counting votes at an election. “Voting machine” includes, but is not limited to, direct recording electronic devices.~~

ITEM 8. Rescind subrule **26.2(4)**.

ITEM 9. Amend rule 721—26.4(50) as follows:

721—26.4(50) Absentee and special voters precinct. The absentee and special voters precinct board shall tabulate ballots in the manner appropriate to the voting equipment, if any has been provided. When an optical scan voting system is used, the board shall follow the procedures in subrule 26.2(2).

~~**26.4(1)** If an optical scan voting system is used, the board shall follow the procedures in subrule 26.2(2).~~

~~**26.4(2)** If paper ballots are to be counted on voting machines, the board shall follow the standards in Part III for counting paper ballots and record the votes on the voting machine.~~

~~**26.4(3)** Rescinded IAB 8/1/07, effective 7/13/07.~~

ITEM 10. Amend rule **721—26.20(49)**, Example for 26.20(2), as follows:

EXAMPLE for 26.20(2): Two write-ins for the same person. The voter has written in the name of the same person on both write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- Candidate 7
(Write-in vote, if any)
- Candidate 7
(Write-in vote, if any)

SECRETARY OF STATE[721](cont'd)

This example shows one vote for Candidate 7. Iowa Code section 49.99 provides that only one vote be counted if a voter writes the name of the same person more than once in the proper places on a ballot ~~or on a voting machine~~ for an office to which more than one person is to be elected.

- ITEM 11. Rescind and reserve rule **721—26.60(49)**.
- ITEM 12. Rescind and reserve rule **721—26.61(49)**.
- ITEM 13. Rescind paragraph **26.104(1)“d.”**
- ITEM 14. Rescind subrule **26.105(3)**.

ARC 9294B

STATE PUBLIC DEFENDER[493]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender hereby gives Notice of Intended Action to amend Chapter 7, “Definitions,” Chapter 11, “Attorney Fee Contracts,” and Chapter 12, “Claims for Indigent Defense Services,” Iowa Administrative Code.

These amendments clarify the rules regarding attorney fee contracts in appellate cases and fee limitations to bring the State Public Defender’s administrative rules into compliance with the Iowa Supreme Court’s decisions in State v. Dudley and Simmons v. State Public Defender.

Interested persons may make written comments or suggestions on the proposed amendments on or before January 21, 2011. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515)281-7289; or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on January 21, 2011, at 9 a.m. in Conference Room 424, Lucas State Office Building, 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 State Public Defender and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9293B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 13B and 815.

ARC 9311B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2010 Iowa Acts, House File 2526, section 7(6), the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments remove the provisions of the rules that permitted the Department to limit enrollment and establish a waiting list for Medicaid home- and community-based habilitation services. Section 2402 of the Patient Protection and Affordable Care Act, Public Law 111-148, prohibits states from setting limits on the number of people allowed to access home- and community-based service as a state plan service.

Home- and community-based habilitation services have been available in Iowa for nearly four years, and the enrollment limit has never been reached. Eligibility criteria for the program remain unchanged, so there is no reason to anticipate an increase in enrollment as a result of removing the enrollment limit.

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

The Council on Human Services adopted these amendments on December 8, 2010.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because 2010 Iowa Acts, House File 2526, section 7(6), authorizes the Department to adopt emergency rules for the medical assistance program when the amendments are necessary to comply with federal requirements.

The Department finds that these amendments confer a benefit by eliminating the possibility that an applicant for habilitation services will be put on a waiting list for services. 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.

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

These amendments shall become effective on January 1, 2011.

The following amendments are adopted.

ITEM 1. Rescind subrule 78.27(3) and adopt the following **new** subrule in lieu thereof:

78.27(3) Application for services. The case manager shall apply for services on behalf of a member by entering a program request for habilitation services in ISIS. The department shall issue a notice of decision to the applicant when financial eligibility, determination of needs-based eligibility, and approval of the service plan have been completed.

ITEM 2. Rescind and reserve subparagraph 78.27(11)“a”(1).

[Filed Emergency 12/8/10, effective 1/1/11]

[Published 12/29/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9299B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 10A.104(5) and 10A.801(7), the Department of Inspections and Appeals hereby adopts new Chapter 11, “Procedure for Contested Cases Involving Permits to Carry Weapons and Acquire Firearms,” Iowa Administrative Code.

The new chapter implements provisions contained in 2010 Iowa Acts, Senate File 2379, section 14, requiring the Department to establish a procedural process through which Iowans who have been denied

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

a permit to acquire firearms or carry weapons or whose permit has been suspended or revoked may appeal the decision of the sheriff or Commissioner of Public Safety to an administrative law judge.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable because of the immediate need for rules to implement the new law.

Additionally, the Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the rules should be waived and these rules should be made effective January 1, 2011, as that is the effective date of the enacted legislation.

These rules are also published herein under Notice of Intended Action as **ARC 9298B** to allow for public comment. This emergency filing permits the Department to implement the new law.

These rules are intended to implement 2010 Iowa Acts, Senate File 2379, section 14.

These rules will become effective January 1, 2011.

The following amendment is adopted.

Adopt the following **new** 481—Chapter 11:

CHAPTER 11
PROCEDURE FOR CONTESTED CASES INVOLVING PERMITS
TO CARRY WEAPONS AND ACQUIRE FIREARMS

481—11.1(17A,724) Definitions.

“*Agency*” means the commissioner of public safety or the sheriff of the county in which the aggrieved party resides.

“*Applicant*” means a person who has applied for a permit to carry weapons or acquire firearms.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5).

“*Division*” means the division of administrative hearings of the Iowa department of inspections and appeals.

“*Party*” means each person or agency named or admitted as a party.

“*Permittee*” means a person who has received a permit to carry weapons or acquire firearms.

481—11.2(724) Appeals. An applicant or permittee may appeal a decision by an agency to deny an application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms.

11.2(1) *Written appeal.* The appeal shall be in writing and clearly state the reasons for rebutting the denial, suspension, or revocation.

11.2(2) *Filing of appeal.* Within 30 days of the applicant’s or permittee’s receipt of the agency’s decision, the applicant or permittee shall file the appeal, a copy of the agency’s written decision, and a fee of \$10 with the Iowa Department of Inspections and Appeals, Division of Administrative Hearings, 502 East 9th Street, Des Moines, Iowa 50319.

11.2(3) *Service on the agency.* The applicant or permittee shall serve a copy of the appeal on the agency at the time the appeal is filed with the division.

11.2(4) *Denial of appeal.* The division may deny any appeal that does not meet each of the requirements in subrules 11.2(1) to 11.2(3).

481—11.3(17A,724) Notice of hearing. The division shall prepare and serve the notice of hearing.

11.3(1) The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the agency decision on appeal;
- d. Identification of the parties;
- e. Reference to the procedural rules governing the contested case proceeding;
- f. Identification of the administrative law judge, including the judge’s address and telephone number; and

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

g. Notification that failure to appear and participate in the contested case proceeding may result in the entry of a default judgment.

11.3(2) Service of the notice of hearing shall be accomplished by first-class mail.

481—11.4(17A,724) Agency record.

11.4(1) Upon receipt of a copy of the notice of hearing, the agency shall file with the division:

a. A copy of all documents used by the agency in reaching the decision; and
b. A form identifying the name, address, and telephone number of the agency's contact person or attorney representative.

11.4(2) The agency shall provide to the applicant or permittee a copy of all documents used by the agency in reaching the decision.

481—11.5(17A) Contested case hearing. The hearing shall be conducted pursuant to the standards established in Iowa Code chapter 17A for contested case hearings. The hearing shall be held by telephone conference call, unless a party to the proceeding requests an in-person hearing from the administrative law judge no later than five days before the hearing. All in-person hearings shall be held at the division's headquarters in Des Moines, Iowa. If the administrative law judge grants an in-person hearing, the administrative law judge may allow one party to appear by telephone.

481—11.6(17A) Service and filing of documents.

11.6(1) *When service is required.* Every document filed in a contested case proceeding shall be served on each party of record. Service shall be made by delivering or mailing a copy to the party's last-known address.

11.6(2) *Filing.* All documents in the contested case proceeding shall be filed with the administrative law judge. A document is deemed filed at the time it is received by the division. A document is deemed to be served when mailed by first-class mail, so long as there is proof of mailing.

11.6(3) *Proof of mailing.* Proof of mailing includes a legible United States Postal Service postmark on the envelope and a certificate of service, a notarized affidavit, or certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of the state of Iowa, that on (date of mailing or hand-delivery), I mailed or hand-delivered copies (describe document(s)) addressed to (opposing party) by depositing the same in a United States post office mailbox with correct postage properly affixed, or I hand-delivered copies.

(Date)

(Signature)

11.6(4) *Filing by electronic means.* The administrative law judge may permit service or filing of particular documents by facsimile, electronic mail, or similar electronic means. When permitted, service by facsimile, electronic mail, or similar electronic means is complete upon transmission.

481—11.7(17A) Witness lists and exhibits. No later than five days before the hearing, a party shall serve on all parties and the administrative law judge a witness list and a copy of any exhibit(s) the party intends to introduce into evidence during the contested case proceeding. If a party fails to serve on all parties and the administrative law judge a witness list or any exhibit five days before the hearing, the party may be precluded from calling the witness at hearing or introducing the exhibit(s) into the record at hearing.

481—11.8(17A) Evidence. The administrative law judge shall rule on the admissibility of evidence and may take official notice of facts in accordance with applicable requirements of law. Evidence in the proceeding shall be confined to the issues for which the parties received notice prior to the hearing.

481—11.9(17A) Withdrawals and dismissals. A request for withdrawal or dismissal of the appeal may be made with the division prior to the hearing. Either request must be in writing or secured on the record.

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

11.9(1) *Withdrawals.* An applicant or permittee who requested a contested case proceeding may request a withdrawal of the appeal. Upon receipt of a request for withdrawal of the appeal, the administrative law judge shall issue an order dismissing the appeal and closing the case.

11.9(2) *Dismissals.* An agency may request a dismissal of the appeal by agreeing to grant the entire relief sought by the applicant or permittee. The administrative law judge shall review a request for dismissal to determine whether it grants all relief requested in the appeal. If the request grants all relief requested in the appeal, the administrative law judge shall issue an order dismissing the appeal, ordering the agency to grant the relief requested, and closing the case.

481—11.10(17A) Default. If a party fails to appear after proper service of notice, the administrative law judge may enter a default order against the party or may proceed with the hearing and make a decision in the absence of the party.

481—11.11(10A) Costs. Costs of the contested case hearing shall be paid by the agency.

481—11.12(724) Probable cause. Probable cause to deny an initial or renewal application for a permit to carry weapons or acquire firearms or to suspend or revoke a permit to carry weapons or acquire firearms means a reasonable ground exists for supposing that the basis for the denial, suspension or revocation is well-founded.

481—11.13(724) Clear and convincing evidence. Clear and convincing evidence means there is no serious or substantial doubt about the correctness of the conclusion drawn from the evidence.

These rules are intended to implement 2010 Iowa Acts, Senate File 2379, section 14.

[Filed Emergency 12/7/10, effective 1/1/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9293B**STATE PUBLIC DEFENDER[493]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, "Definitions," Chapter 11, "Attorney Fee Contracts," and Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

These amendments clarify the rules regarding attorney fee contracts in appellate cases and fee limitations to bring the State Public Defender's administrative rules into compliance with the Iowa Supreme Court's decisions in State v. Dudley and Simmons v. State Public Defender.

Pursuant to Iowa Code section 17A.4(3), the State Public Defender finds that notice and public participation are unnecessary because the Supreme Court's decision makes it clear that changes must be made immediately to deal with outstanding claims which may not be processed under existing rules.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the State Public Defender further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective December 7, 2010, because the Supreme Court's decision makes it clear that changes must be made immediately to deal with outstanding claims which may not be appropriately processed under existing rules and because these amendments are in the public interest.

These amendments are also published herein under Notice of Intended Action as **ARC 9294B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B and 815.

These amendments became effective December 7, 2010.

The following amendments are adopted.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of “Appeal,” as follows:

“Appeal” means a proceeding, other than an interlocutory appeal, application for discretionary review, or juvenile court petition on appeal, filed with the Iowa supreme court and does not include a petition for certiorari filed with the United States Supreme Court.

ITEM 2. Amend rule **493—7.1(13B,815)**, definition of “Contract,” as follows:

“Contract” means a written agreement between the state public defender and an attorney to provide legal services to an indigent person. The contract may be for the provision of legal services at either the trial court level or the appellate court level.

ITEM 3. Amend rule **493—7.1(13B,815)**, definition of “Date of service,” as follows:

“Date of service” means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date a warrant was issued for the client, or the date of a court order authorizing the attorney’s withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims or claims for ~~other~~ professional services performed by nonattorneys, “date of service” means the last date on the itemization. For juvenile claims, “date of service” means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date on which the client ceased to be a party in the CINA case, the date of a court order authorizing the attorney’s withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, “date of service” means the date on which the procedendo issues or the case is dismissed. For contract appellate claims, “date of service” means the date of on which the case was dismissed, the date of a court order authorizing the attorney’s withdrawal prior to the filing of the page-proof brief, the date on which the proof brief was filed, or final brief the date on which the procedendo was issued. For claims filed as a result of a notice of action letter, “date of service” means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, “date of service” means the date of the order.

ITEM 4. Amend rule **493—7.1(13B,815)**, definition of “Fee limitations,” as follows:

“Fee limitations” means the attorney fee limitations established by the state public defender for specific classes of cases as specified in rule 493—12.6(13B,815), together with out-of-pocket expenses approved by the state public defender, whether submitted by a public defender, by an appointed attorney pursuant to 493—Chapter 12, or by another professional pursuant to 493—Chapter 13.

ITEM 5. Amend rule **493—7.1(13B,815)**, definition of “Paralegal time,” as follows:

“Paralegal time,” which is payable from the indigent defense fund, means time spent in a Class A felony case at the trial court level in which only one attorney is appointed preparing pleadings and motions, reviewing transcripts, performing legal research, and interviewing witnesses in person, and attending staffings in juvenile cases. In Class A felony cases in which only one attorney is appointed, paralegal time may include time spent in court assisting the appointed attorney. Paralegal time does not include typing, scheduling, answering the telephone, talking on the telephone except when interviewing witnesses, or other clerical activities or activities that duplicate work performed by the appointed attorney. Paralegal time is not payable in any other cases or in Class A felony cases in which two attorneys are appointed.

ITEM 6. Amend rule **493—7.1(13B,815)**, definition of “Timely claim,” as follows:

“Timely claim” means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. A claim not submitted within 45 days of the date of service shall be deemed a timely claim if the delay in submitting the claim was due to the extended illness, hospitalization or death of the claimant or due to the extended illness or hospitalization of the claimant within 5 days before the expiration of the 45-day limitation. A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within 45 days of being returned by the state public defender.

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 7. Amend rule 493—11.2(13B), introductory paragraph, as follows:

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons at either the trial level or the appellate level. Nothing in this rule is intended to imply that an attorney may not have both a contract for trial court work and a contract for appellate work.

ITEM 8. Amend subrule 11.5(1) as follows:

11.5(1) A Contract elements. The state public defender may enter into a contract with a private attorney ~~may be awarded~~ for the provision of ~~trial or appellate~~ legal services to indigents in cases as ~~determined by the state public defender~~ at the trial court level. The state public defender may also enter into a contract with a private attorney for the provision of legal services to indigents in cases at the appellate level.

ITEM 9. Amend subrule 11.5(6) as follows:

11.5(6) Compensation. Unless the contract provides for a different rate or manner of payment, the attorney shall be compensated as set forth in rule 493—12.4(13B,815) for ~~trial work performed pursuant to a contract for services at the trial court level~~ and rule 493—12.5(13B,815) for ~~appellate work performed pursuant to a contract for services at the appellate level.~~

ITEM 10. Amend subrule 11.5(7) as follows:

11.5(7) Contract form. Unless the attorney and state public defender agree in writing to vary the terms of the contract between them, the terms contained in the Legal Services Contract Indigent Defense Casework No. 493-04 ~~493-10~~ shall constitute the agreement between the parties for the provision of legal services at the trial court level. The terms of Legal Services Contract Appellate Casework No. 493-10A shall constitute the agreement between the parties for the provision of legal services at the appellate level.

ITEM 11. Amend paragraph **12.2(1)“c”** as follows:

c. A copy of any application and court order authorizing the attorney to exceed the attorney fee limitations.

ITEM 12. Rescind rule 493—12.5(13B,815) and adopt the following **new** rule in lieu thereof:

493—12.5(13B,815) Appellate contracts. Subject to the provisions of this rule, an attorney who has entered into an appellate contract with the state public defender shall be paid pursuant to the terms of this rule for each appellate case to which the attorney is appointed. This rule applies to all appellate contract claims received by the state public defender on or after December 7, 2010.

12.5(1) Frivolous appeals. In an appeal in which the attorney withdraws from a case either based on a determination that the appeal is frivolous or for any other reason or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid for all reasonable, necessary and appropriate hours claimed on the itemization at the rate of \$60 per hour.

12.5(2) Juvenile cases. For juvenile appeals, the following provisions apply.

a. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, subsequent attorney fee claims must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether the attorney hours claimed on subsequent appellate claims are reasonable and necessary.

b. In an appellate case in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid for all reasonable, necessary and appropriate legal services and expenses claimed on the itemization at the rate of \$60 per hour.

12.5(3) Appeals from a guilty plea. Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a guilty plea need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$600 or less. If the amount of the

STATE PUBLIC DEFENDER[493](cont'd)

claim is in excess of \$600, the attorney must provide an itemization and will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(4) Appeals from a trial. Notwithstanding the provisions of subrule 12.2(1), an attorney who has entered into an appellate contract with the state public defender and whose client is appealing from a judgment as the result of a jury trial or bench trial need not provide an itemization of legal services provided in the appeal if the amount of the attorney fee portion of the claim is \$1,800 or less. If the amount of the claim is in excess of \$1,800, the attorney must provide an itemization and will be paid for reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(5) Applications for further review. In a case in which an application for further review is filed, the attorney will be paid for all reasonable, necessary and appropriate legal services claimed on the itemization at the rate of \$60 per hour, together with permissible out-of-pocket expenses.

12.5(6) Application of fee limitations. The fee limitations and procedures provided in rule 493—12.6(13B,815) have no application to appellate contracts.

ITEM 13. Amend rule 493—12.6(13B,815), catchwords, as follows:

493—12.6(13B,815) Fee Attorney fee limitations.

ITEM 14. Amend subrule 12.6(1), introductory paragraph, as follows:

12.6(1) Adult cases. The state public defender establishes attorney fee limitations for combined attorney time and paralegal time for the following categories of adult cases:

ITEM 15. Amend subrule 12.6(2), introductory paragraph, as follows:

12.6(2) Juvenile cases. The state public defender establishes attorney fee limitations for ~~combined~~ attorney time ~~and paralegal time~~ for the following categories of juvenile cases:

ITEM 16. Amend subrule 12.6(3) as follows:

12.6(3) Appellate cases. Except as provided in this subrule, the state public defender establishes a an attorney fee limitation of ~~\$2,200~~ \$2,400 for ~~combined attorney time and paralegal time~~ for all activities reasonable, necessary, and appropriate legal services in appellate cases filed with the Iowa supreme court.

a. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a an attorney fee limitation of \$1,000. In an appeal to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$55 per hour, with a an attorney fee limitation of \$1,100. In an appeal to which the attorney was appointed after June 30, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$60 per hour, with a an attorney fee limitation of \$1,200.

b. In an appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a an attorney fee limitation of \$500. In an appellate case to which the attorney was appointed after June 30, 2006, and before July 1, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$55 per hour, with a an attorney fee limitation of \$550. In an appellate case to which the attorney was appointed after June 30, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$60 per hour, with a an attorney fee limitation of \$600.

c. In a juvenile case in which a petition on appeal is filed, an appointed trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing and ~~the trial court appoints the trial attorney to pursue the full briefing~~, subsequent attorney fee claims

STATE PUBLIC DEFENDER[493](cont'd)

must be submitted on an Appellate form. Any amount paid on the petition on appeal shall be considered in determining whether subsequent appellate claims exceed the fee limitations.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 493—12.5(13B,815).

ITEM 17. Amend subrule 12.6(4) as follows:

12.6(4) *Claims in excess of fee limitations.* A claim in excess of the attorney fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the attorney fee limitations prior to exceeding the attorney fee limitations. If authorization is granted, payment in excess of the attorney fee limitations shall be made only for services performed after the date of submission of the request for authorization.

ITEM 18. Amend subrule 12.6(5) as follows:

12.6(5) *Retroactivity of authorization.* Authorization to exceed the attorney fee limitations shall be effective only as to services performed after a request for authorization to exceed the attorney fee limitations is filed with the court unless the court enters an order before submission of the claim to the state public defender specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to file the application prior to the attorney's exceeding the attorney fee limitations. "Good cause" as used in this subrule means a sound, effective and truthful reason. "Good cause" is more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause. Retroactive court orders entered after the date of the state public defender's action on a claim are void. See Iowa Code section 13B.4(4).

[Filed Emergency 12/7/10, effective 12/7/10]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9312B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of 2009 Iowa Code Supplement section 29C.20A(2), the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

These amendments add a voucher system for the administration of benefits under the Iowa Disaster Aid Individual Assistance Grant Program as directed by the Iowa General Assembly. Program rules had required that applicants for assistance first purchase the goods or services they need for disaster recovery and then present receipts for reimbursement. This requirement presented a barrier to applicants who have insufficient resources to make the purchases. Issuance of assistance through a purchase voucher to the seller of goods or services enables applicants to replace or repair items without an initial outlay of funds.

These amendments require the county board of supervisors to designate a local administrative entity to administer a voucher system for issuing state individual disaster assistance to county residents. The designated entity must enter into a contract with the Department for determining eligibility of applicants, issuing vouchers to eligible applicants to purchase needed goods and services, and receiving reimbursement from the Department for the voucher purchases. There is no reimbursement for the administrative expenses of the local administrative entity.

These amendments do not provide for waivers in specified situations. Management of a voucher system for residents of a county affected by a disaster is best achieved locally.

These amendments were also Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9128B**. Notice of Intended Action to solicit comments on the amendments was published on the same date as **ARC 9129B**. The Department received no comments on the Notice of Intended Action during the designated comment period.

The Department has added Items 3 and 5 to make technical changes to:

- Replace the word "reimbursement" with "assistance" to reflect the fact that aid may now be issued through vouchers, and
- Correct the address for submitting an appeal request to the Department.

The Council on Human Services adopted these amendments on December 8, 2010.

These amendments are intended to implement 2009 Iowa Code Supplement section 29C.20A as amended by 2010 Iowa Acts, House File 2294.

These amendments shall become effective on March 1, 2011, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—58.2(29C) as follows:

441—58.2(29C) Program implementation.

58.2(1) *Disaster declaration.* The Iowa individual assistance grant program (IIAGP) shall be implemented when the governor issues a declaration of a state of disaster emergency ~~and~~ that authorizes individual assistance. The program shall be in effect only in those counties named in the declaration. Assistance shall be provided for a period not to exceed 120 days from the date of declaration.

58.2(2) *Voucher system.* To implement a voucher system for IIAGP, the county board of supervisors shall authorize a local administrative entity to administer the system.

- a.* The local administrative entity may be, but is not limited to:
- (1) A local community organization active in disaster (COAD),
 - (2) A local long-term recovery committee (LTRC),
 - (3) A nonprofit organization,
 - (4) A faith-based organization, or
 - (5) A regional or statewide LTRC.

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b. The local administrative entity shall enter into a contract with the department of human services using Form FA 09-15-2010, Fiscal Agent Contract. The contract shall specify the terms for the administration of IIAGP benefits through a voucher system.

ITEM 2. Amend rule 441—58.3(29C), introductory paragraph, as follows:

441—58.3(29C) Application for assistance. To request ~~reimbursement~~ assistance for disaster-related expenses, the household shall complete Form 470-4448, Individual Disaster Assistance Application, and submit it within 45 days of the disaster declaration to the county emergency management coordinator along with: (1) receipts for the claimed expenses or (2) a request to participate in a voucher system.

ITEM 3. Amend rule 441—58.5(29C) as follows:

441—58.5(29C) Eligible categories of assistance. The maximum assistance available to a household in a single disaster is \$5,000. ~~Reimbursement~~ Assistance is available under the program for the following disaster-related expenses:

58.5(1) ~~Reimbursement~~ Assistance may be issued for personal property, including repair or replacement of the following items, based on the item's condition:

a. to d. No change.

58.5(2) ~~Reimbursement~~ Assistance may be issued for home repair as needed to make the home safe, sanitary, and secure, up to a maximum of \$5,000.

a. No change.

b. Reimbursement Assistance may be authorized for:

(1) to (3) No change.

c. No change.

58.5(3) ~~Reimbursement~~ Assistance may be issued for temporary housing assistance, up to a limit of \$50 per day, for lodging at a licensed establishment, such as a hotel or motel, if the household's home is destroyed, uninhabitable, inaccessible, or unavailable to the household.

ITEM 4. Amend rule 441—58.6(29C) as follows:

441—58.6(29C) Eligibility determination and payment.

58.6(1) The county emergency management coordinator or designee shall:

a. No change.

b. ~~Submit~~ If receipts are included, submit the household's application form and receipts to the Homeland Security and Emergency Management Division, Camp Dodge, Building W-4, 7105 NW 70th Avenue, Johnston, Iowa 50131. The envelope shall be marked "IIAGP application."

c. If the applicant requests to participate in the voucher system, forward the application to the local administrative entity for the county.

58.6(2) For applications with receipts:

a. The homeland security and emergency management division of the department of public defense shall:

~~*a.*~~ (1) Review the application.

~~*b.*~~ (2) Submit the household's application form and receipts to the DHS ~~Division of Results-Based Accountability~~ Office of the Deputy Director for Administration, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The envelope shall be marked "IIAGP application."

~~**58.6(3) *b.***~~ Designated ~~disaster~~ staff in the department of human services shall:

~~*a.*~~ (1) Determine eligibility and the amount of payment.

~~*b.*~~ (2) Notify the applicant household of the eligibility decision.

~~*c.*~~ (3) Authorize payment to an eligible household.

~~*d.*~~ (4) Process appeals.

58.6(3) For applications with a voucher request:

a. The local administrative entity for the county shall:

(1) Determine eligibility and the amount of payment.

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- (2) Notify the applicant household of the eligibility decision.
- (3) Authorize vouchers to an eligible household to purchase needed goods and services.
- (4) Pay vendors for goods and services purchased with vouchers.
- (5) Submit a claim to the department of human services for reimbursement for voucher purchases.
- b.* Designated staff in the department of human services shall:
 - (1) Process reimbursement to the local administrative entity for claims.
 - (2) Process appeals.

ITEM 5. Amend subrule 58.7(1) as follows:

58.7(1) Reconsideration. The household may request reconsideration of the department's decisions regarding eligibility and the amount of reimbursement assistance awarded.

a. To request reconsideration, the household shall submit a written request to the ~~DHS Division of Results-Based Accountability~~ Office of the Deputy Director for Administration, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 15 days of the date of the department's letter notifying the household of its decision.

b. No change.

ITEM 6. Amend **441—Chapter 58**, Division I, implementation sentence, as follows:

These rules are intended to implement 2009 Iowa Code Supplement chapter 29C as amended by ~~2007~~ 2010 Iowa Acts, House File ~~896~~ 2294.

[Filed 12/8/10, effective 3/1/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9313B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

These amendments implement the Iowans Helping Iowans Unmet Needs Disaster Assistance Program for the counties identified by the President's Major Disaster Declaration for Individual Assistance, FEMA-1930-DR. The program is intended to address disaster-related expenses that cannot be met by other financial assistance. Funding for the program is established by the Governor of Iowa through the Iowans Helping Iowans Program.

The program provides assistance for repair or replacement of personal property, home repair, food assistance, child care, and temporary housing to households whose income is less than 300 percent of the federal poverty guidelines. The amount of assistance available to a household is capped at \$2,500. The program will end when funds are exhausted or on June 30, 2011, whichever occurs first.

The Rebuild Iowa Office has distributed the available funding among the designated counties in proportion to the number of applications from each county for aid from the Federal Emergency Management Agency. The program is administered through a local administrative entity designated by the county board of supervisors in each of the affected counties. The local administrative entity must enter into a contract with the Department that delineates the entity's responsibilities for the administration of the program.

The local administrative entity receives applications from households, determines each household's eligibility, and disburses the funds allocated to the county through direct reimbursement of documented expenses or issuance of vouchers for purchase of approved goods or services. The local administrative entity may keep up to 5 percent of the amount of benefits issued as administrative expense. The local administrative entity is required to submit weekly reports on program expenditures and to return any unused funds from its allocation when the program ends.

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

These amendments were also Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9130B**. Notice of Intended Action to solicit comment on these amendments was published on the same date as **ARC 9131B**. The Department received no comments during the designated comment period.

The Department has changed the amendments as published in the Notice of Intended Action. The second sentence of the introductory paragraph of rule 441—58.52(234) has been revised to read as follows: "This program is available for households affected by natural disasters in those areas identified by the President's Major Disaster Declaration for Individual Assistance, FEMA-1930-DR."

In addition, "will" has been changed to "shall" in the second sentence of subrule 58.54(4). The sentence now reads as follows: "This program shall not reimburse the amount of the insurance deductible when the claim exceeds the deductible amount."

The Council on Human Services adopted these amendments on December 8, 2010.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on February 2, 2011, at which time the Adopted and Filed Emergency amendments shall be rescinded.

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 [58.51 to 58.58] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9131B** and Adopted and Filed Emergency as **ARC 9130B**, IAB 10/6/10.

[Filed 12/8/10, effective 2/2/11]

[Published 12/29/10]

[For replacement pages for IAC, see IAC Supplement 12/29/10.]

ARC 9314B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments update provider qualifications for the Medicaid home- and community-based services programs to remove obsolete language and strengthen requirements. These amendments:

- Change the name of the home- and community-based services mental retardation (MR) waiver to the intellectual disability waiver (Items 1, 4, 7, and 18).
- Eliminate references to home care standards of the Department of Public Health in the qualifications for providers of homemaker services and home care services and require instead a contract with the Department of Public Health (Items 2, 5, 16, 22, 24, 27, 30, 32, 39, 41, and 42).
- Eliminate references to rules of the Department of Elder Affairs (now Department on Aging) in standards for providers of adult day care and reference instead Department of Inspections and Appeals rules at 481—Chapter 70 (Items 3, 5, 15, 22, 26, 27, 32, 34, 38, 39, 41, and 42).
- Eliminate references to rules of the Department of Elder Affairs in standards for providers of assisted living and reference instead Department of Inspections and Appeals rules at 481—Chapter 69 (Items 5, 22, 27, 32, 39, and 41).
- Clarify the qualifications for providers of interim medical monitoring and treatment in relation to training and experience necessary to provide medical intervention in a medical emergency (Items 6, 33, and 40).

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- Change the word “consumer” to “member” where applicable in the rules amended (Items 5, 6, 10 to 14, 22, 27, 31 to 33, and 39 to 41).
- Eliminate the requirement that licensed dietitians must be approved by an area agency on aging (Items 9 and 20).
- Clarify that an independent support broker must have completed training approved by the Department, rather than certification (Item 11).
- Clarify who may provide self-directed personal care, individual-directed goods and services, and self-directed community supports and employment under the consumer choices option (Items 12, 13, and 14). A person who is the recipient of respite services paid on behalf of a member through a waiver (including through the consumer choices option) may not serve as the provider of one of these services for that member or any other member. Nor may the parent or stepparent of a minor member or the spouse of a member be paid to provide self-directed personal care, individual-directed goods and services, or self-directed community supports and employment services to that member.
- Clarify the time lines for submitting invoices and timesheets for reimbursement through the consumer choices option (Items 12, 13, and 14). The financial management service must receive invoices and timesheets within 30 calendar days of the date of service.
- Change qualifications for providers of chore service under the elderly waiver to eliminate area agencies on aging and to add home health agencies certified under Medicare, agencies that provide a similar service through a contract with the Department of Public Health, chore providers that were enrolled on June 30, 2010, and community businesses engaged in the provision of chore services that have the necessary licenses and insurance (Item 18).
- Change qualifications for providers of assistive devices under the elderly waiver to reference current Department on Aging rules and to add providers that were enrolled on June 30, 2010, and community businesses engaged in the provision of assistive devices that have the necessary licenses and insurance (Item 21).
- Update qualifications for case managers to reference current Department on Aging rules and to replace a reference to approval under Department of Public Health standards with a reference to possession of a contract with the Department of Public Health (Item 23).
- Under the intellectual disability and brain injury waivers, remove supported community living restrictions on living with other waiver members and remove obsolete provisions for conversion of existing facilities (Items 28, 29, 35, and 36).
- Add requirements for accreditation of providers of supported employment under the intellectual disability and brain injury waivers (Items 31 and 37).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9112B**. Three people submitted comments on the Notice of Intended Action. One noted that changes to allow people on various waivers to live together also required changes to 441—Chapter 78. Those changes were included in a Notice of Intended Action published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9170B**.

Another commenter requested additional criteria for approval of five-bed living units and for qualifying for provision of supported employment services without having national accreditation. The Department would consider such changes, but additional time is needed for their development.

Another commenter expressed concern that transportation providers under the intellectual disability and brain injury waivers were required to get a letter of approval from an area agency on aging. The intent of the rules is to recognize a letter of approval from an area agency on aging as a sufficient qualification to provide transportation under those waivers, not to require agencies to go to the area agency for approval. Both waivers offer several alternative qualifications.

One commenter pointed out that the statute for restaurant licensing and inspection cited in the qualifications for providers of home-delivered meals has been renumbered from Iowa Code chapter 137B to chapter 137F. The Department has added new Items 8, 19, and 25 to the amendments as published under Notice of Intended Action to make this technical change and has renumbered the other items accordingly.

The following items apply to individual home- and community-based waivers:

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- AIDS/HIV waiver: Items 4, 11 to 14, and 24 to 27.
- Brain injury waiver: Items 1, 11 to 14, and 35 to 40.
- Children's mental health waiver: Items 7 and 42.
- Elderly waiver: Items 11 to 23.
- Ill and handicapped waiver: Items 2 to 14.
- Intellectual disability waiver (formerly called the mental retardation or MR waiver): Items 1, 7, 11 to 14, and 28 to 34.
- Physical disability waiver: Items 7 and 41.

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

The Council on Human Services adopted these amendments on December 8, 2010.

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

These amendments shall become effective on March 1, 2011.

The following amendments are adopted.

ITEM 1. Strike "mental retardation waiver" wherever it appears in paragraph **77.25(6)"g"**; subparagraphs **77.25(7)"a"(1)**, **77.25(8)"d"(1)** and **77.25(9)"a"(1)**; rule **441—77.37(249A)**; and subparagraph **77.39(14)"a"(1)** and insert "intellectual disability waiver" in lieu thereof.

ITEM 2. Amend subrule 77.30(1) as follows:

77.30(1) Homemaker providers. Homemaker providers shall be agencies ~~which meet the home care standards and requirements set forth in department of public health rules, 641—80.5(135), 641—80.6(135), and 641—80.7(135) or which are certified as a home health agency under Medicare.~~ that are:

- a. Certified as a home health agency under Medicare, or
- b. Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 3. Amend subrule 77.30(3) as follows:

77.30(3) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 4. Strike "HCBS MR or BI waiver" wherever it appears in subparagraphs **77.30(5)"a"(2)** and **77.34(5)"a"(3)** and insert "home- and community-based services intellectual disability or brain injury waiver" in lieu thereof.

ITEM 5. Amend subrule 77.30(7) as follows:

77.30(7) Consumer-directed attendant care service providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

- (1) At least 18 years of age.
- (2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.
- (3) Not the spouse of the ~~consumer~~ member or a parent or stepparent of a ~~consumer~~ member aged 17 or under.
- (4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the

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department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

g. Assisted living programs that are ~~voluntarily accredited or certified~~ by the department of elder affairs inspections and appeals under 481—Chapter 69.

h. Adult day service providers ~~which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 6. Amend subrule 77.30(8) as follows:

77.30(8) *Interim medical monitoring and treatment providers.*

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers~~ members shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer~~ member or a parent or stepparent of the ~~consumer~~ member if the ~~consumer~~ member is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer~~ member.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan, to provide medical intervention or intervention in a medical emergency necessary to carry out the consumer's member's plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.~~

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers~~ members. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 7. Strike “mental retardation or brain injury waiver” wherever it appears in paragraphs **77.30(9)“c,” 77.33(9)“c,” 77.37(17)“a,” 77.41(3)“a”** and **77.46(2)“d”** and insert “home- and community-based services intellectual disability or brain injury waiver” in lieu thereof.

ITEM 8. Amend paragraph **77.30(11)“d”** as follows:

d. Restaurants licensed and inspected under Iowa Code chapter ~~437B~~ 137F.

ITEM 9. Amend subrule 77.30(12) as follows:

77.30(12) *Nutritional counseling.* The following providers may provide nutritional counseling by a ~~licensed~~ dietitian licensed under 645—Chapter 81:

a. to d. No change.

e. ~~Licensed~~ Independent licensed dietitians approved by an area agency on aging.

ITEM 10. Amend subrule 77.30(13), introductory paragraph, as follows:

77.30(13) *Financial management service.* ~~Consumers~~ Members who elect the consumer choices option shall work with a financial institution that meets the following qualifications.

ITEM 11. Amend subrule 77.30(14) as follows:

77.30(14) *Independent support brokerage.* ~~Consumers~~ Members who elect the consumer choices option shall work with an independent support broker who meets the following qualifications.

a. No change.

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b. The broker shall not be the ~~consumer's~~ member's guardian, conservator, attorney in fact under a durable power of attorney for health care, power of attorney for financial matters, trustee, or representative payee.

c. The broker shall not provide any other paid service to the ~~consumer~~ member.

d. The broker shall not work for an individual or entity that is providing services to the ~~consumer member~~.

e. The broker must consent to a criminal background check and child and dependent adult abuse checks. The results shall be provided to the ~~consumer~~ member.

f. The broker must complete ~~an~~ independent support brokerage ~~certification~~ training approved by the department.

ITEM 12. Amend subrule 77.30(15) as follows:

77.30(15) *Self-directed personal care.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase self-directed personal care services from an individual or business that meets the following requirements.

a. and *b.* No change.

c. All personnel providing self-directed personal care services shall:

(1) Be at least 16 years of age; ~~and~~.

(2) Be able to communicate successfully with the ~~consumer~~ member.

(3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.

(4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.

(5) Not be the parent or stepparent of a minor child member or the spouse of a member.

d. The provider of self-directed personal care services shall:

(1) No change.

(2) Submit invoices and ~~timecards~~ timesheets to the financial management service ~~within~~ no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 13. Amend subrule 77.30(16) as follows:

77.30(16) *Individual-directed goods and services.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase individual-directed goods and services from an individual or business that meets the following requirements.

a. and *b.* No change.

c. All personnel providing individual-directed goods and services shall:

(1) Be at least 18 years of age; ~~and~~.

(2) Be able to communicate successfully with the ~~consumer~~ member.

(3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.

(4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.

(5) Not be the parent or stepparent of a minor child member or the spouse of a member.

d. The provider of individual-directed goods and services shall:

(1) No change.

(2) Submit invoices and ~~timecards~~ timesheets to the financial management service ~~within~~ no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 14. Amend subrule 77.30(17) as follows:

77.30(17) *Self-directed community supports and employment.* ~~Consumers~~ Members who elect the consumer choices option may choose to purchase self-directed community supports and employment from an individual or business that meets the following requirements.

a. and *b.* No change.

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- c. All personnel providing self-directed community supports and employment shall:
- (1) Be at least 18 years of age; ~~and~~
 - (2) Be able to communicate successfully with the ~~consumer~~ member.
 - (3) Not be the recipient of respite services paid through home- and community-based services on behalf of a member who receives home- and community-based services.
 - (4) Not be the recipient of respite services paid through the consumer choices option on behalf of a member who receives the consumer choices option.
 - (5) Not be the parent or stepparent of a minor child member or the spouse of a member.
- d. The provider of self-directed community supports and employment shall:
- (1) No change.
 - (2) Submit invoices and ~~timecards~~ timesheets to the financial management service ~~within~~ no later than 30 calendar days from the date when the last service in the billing period was provided. Payment shall not be made if invoices and timesheets are received after this 30-day period.

ITEM 15. Amend subrule 77.33(1) as follows:

77.33(1) *Adult day care providers.* ~~Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 16. Amend subrule 77.33(4) as follows:

77.33(4) *Homemaker providers.* ~~Homemaker providers shall be agencies which meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135) or which are certified as a home health agency under Medicare that are:~~

- a. Certified as a home health agency under Medicare, or
- b. Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 17. Strike “HCBS MR” wherever it appears in subparagraph **77.33(6)“a”(4)** and rule **441—77.37(249A)** and insert “home- and community-based services intellectual disability” in lieu thereof.

ITEM 18. Amend subrule 77.33(7) as follows:

77.33(7) *Chore providers.* The following providers may provide chore services:

- a. ~~Area agencies on aging as designated in 321—4.4(231). Chore providers subcontracting with area agencies on aging or with letters of approval from the area agencies on aging stating the organization is qualified to provide chore services may also provide chore services. Home health agencies certified under Medicare.~~
- b. Community action agencies as designated in Iowa Code section 216A.93.
- c. ~~Home health aide providers meeting the standards set forth in subrule 77.33(3). Home health aide providers contracting~~ Agencies authorized to provide similar services through a contract with the department of public health shall be considered to have met these standards (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.
- d. Nursing facilities licensed pursuant to Iowa Code chapter 135C.
- e. ~~Providers certified under the HCBS MR waiver that were enrolled as chore providers as of June 30, 2010, based on a subcontract with or letter of approval from an area agency on aging.~~
- f. Community businesses that are engaged in the provision of chore services and that:
 - (1) Have all necessary licenses and permits to operate in conformity with federal, state, and local laws and regulations, and
 - (2) Submit verification of current liability and workers’ compensation coverage.

ITEM 19. Amend paragraph **77.33(8)“d”** as follows:

- d. ~~Restaurants licensed and inspected under Iowa Code chapter 137B~~ 137F.

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ITEM 20. Amend subrule 77.33(12) as follows:

77.33(12) *Nutritional counseling.* The following providers may provide nutritional counseling by a licensed dietitian licensed under 645—Chapter 81:

a. to *d.* No change.

e. ~~Licensed~~ Independent licensed dietitians approved by an area agency on aging.

ITEM 21. Amend subrule 77.33(13) as follows:

77.33(13) *Assistive devices device providers.* The following providers may provide assistive devices:

a. ~~Medicaid-eligible~~ enrolled medical equipment and supply dealers.

b. ~~Area agencies on aging as designated according to department of elder affairs on aging rules 321—4.3(249D) 17—4.4(231) and 321—4.4(249D) 17—4.9(231).~~

c. ~~Assistive devices providers with a contract with an area agency on aging or with a letter of approval from an area agency on aging stating the organization is qualified to provide assistive devices. Providers that were enrolled as assistive device providers as of June 30, 2010, based on a contract with or letter of approval from an area agency on aging.~~

d. Community businesses that are engaged in the provision of assistive devices and that:

(1) Have all necessary licenses and permits to operate in conformity with federal, state, and local laws and regulations, and

(2) Submit verification of current liability and workers' compensation coverage.

ITEM 22. Amend subrule 77.33(15) as follows:

77.33(15) *Consumer-directed attendant care service providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse of the ~~consumer~~ member or parent or stepparent of a member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to *f.* No change.

g. ~~Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. ~~Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 23. Amend paragraph **77.33(21)“a”** as follows:

a. The case management provider ~~organization~~ shall be an agency or individual that:

(1) to (3) No change.

(4) Is accredited through the Council on Quality and Leadership in Supports for People with Disabilities (~~The Council~~ CQL) to provide case management; or

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(5) Is approved by the department of ~~elder affairs on aging~~ as meeting the standards for case management services in ~~321—Chapter 21~~ 17—Chapter 21; or

(6) ~~Is approved by the department of public health as meeting the standards for case management services in 641—Chapter 80.~~ Is authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services and that:

1. Meets the qualifications for case managers in 641—subrule 80.6(1); and
2. Provides a current IDPH local public health services contract number.

ITEM 24. Amend subrule 77.34(3) as follows:

77.34(3) *Homemaker providers.* ~~Homemaker providers shall be agencies which meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135) and 641—80.7(135), or which are certified as a home health agency under Medicare. that are:~~

- a. Certified as a home health agency under Medicare, or
- b. Authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

ITEM 25. Amend paragraph **77.34(6)“e”** as follows:

- e. ~~Restaurants licensed and inspected under Iowa Code chapter 437B~~ 137F.

ITEM 26. Amend subrule 77.34(7) as follows:

77.34(7) *Adult day care providers.* ~~Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 27. Amend subrule 77.34(8) as follows:

77.34(8) *Consumer-directed attendant care service providers.* ~~The following providers may provide consumer-directed attendant care service:~~

- a. ~~An individual who contracts with the consumer member to provide attendant care service and who is:~~
 - (1) ~~At least 18 years of age.~~
 - (2) ~~Qualified by training or experience to carry out the consumer's member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.~~
 - (3) ~~Not the spouse of the consumer member or a parent or stepparent of a consumer member aged 17 or under.~~
 - (4) ~~Not the recipient of respite services paid through home- and community-based services on the behalf of a consumer member who receives home- and community-based services.~~

b. ~~Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. ~~No change.~~

g. ~~Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. ~~Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

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ITEM 28. Rescind paragraph 77.37(14)“e” and adopt the following **new** paragraph in lieu thereof:

e. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

ITEM 29. Adopt the following **new** paragraph 77.37(14)“f”:

f. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

(1) Approval will not result in an overconcentration of supported community living units in a geographic area.

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need;
2. The quantity of affordable rental housing in the county is insufficient to meet the need; or
3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 30. Amend subparagraph 77.37(15)“a”(7) as follows:

(7) ~~Home care agencies that meet the home care standards and requirements set forth in department of public health rules 641—80.5(135) through 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

ITEM 31. Amend subrule 77.37(16) as follows:

77.37(16) Supported employment providers.

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider, or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation of Services for Families and Children for similar services.

(3) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

~~a. b.~~ Providers responsible for the payroll of ~~consumers~~ members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) ~~Consumer~~ Member vacation, sick leave and holiday compensation.
- (2) Procedures for payment schedules and pay scale.
- (3) Procedures for provision of workers' compensation insurance.
- (4) Procedures for the determination and review of commensurate wages.
- (5) ~~Department of labor requirements.~~

~~b. c.~~ The department will contract only with public or private agencies to provide supported employment services. The department does not recognize individuals as service providers under the supported employment program.

ITEM 32. Amend subrule 77.37(21) as follows:

77.37(21) Consumer-directed attendant care ~~service~~ providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

- (1) At least 18 years of age.
- (2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

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(3) Not the spouse of the ~~consumer member~~ or a parent or stepparent of a ~~consumer member~~ aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer member~~ who receives home- and community-based services.

~~b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135). Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.~~

~~c. to f. No change.~~

~~g. Assisted living programs that are voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

~~h. Adult day service providers which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 33. Amend subrule 77.37(22) as follows:

77.37(22) Interim medical monitoring and treatment providers.

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers members~~ shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer member~~ or a parent or stepparent of the ~~consumer member~~ if the ~~consumer member~~ is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer member~~.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan,~~ to provide medical intervention or intervention in a medical emergency necessary to carry out the ~~consumer's member's~~ plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers members~~. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 34. Amend subrule 77.37(25) as follows:

77.37(25) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 35. Rescind paragraph **77.39(13)“e”** and adopt the following **new** paragraph in lieu thereof:

e. The department shall approve living units designed to serve up to four persons except as necessary to prevent an overconcentration of supported community living units in a geographic area.

ITEM 36. Adopt the following **new** paragraph **77.39(13)“f”**:

f. The department shall approve a living unit designed to serve five persons if both of the following conditions are met:

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(1) Approval will not result in an overconcentration of supported community living units in a geographic area.

(2) The county in which the living unit is located provides to the bureau of long-term care verification in writing that the approval is needed to address one or more of the following issues:

1. The quantity of services currently available in the county is insufficient to meet the need;
2. The quantity of affordable rental housing in the county is insufficient to meet the need; or
3. Approval will result in a reduction in the size or quantity of larger congregate settings.

ITEM 37. Amend subrule 77.39(15) as follows:

77.39(15) Supported employment providers.

a. The following agencies may provide supported employment services:

(1) An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider, a community employment service provider or a provider of a similar service.

(2) An agency that is accredited by the Council on Accreditation of Services for Families and Children for similar services.

(3) An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations for similar services.

(4) An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities for similar services.

(5) An agency that is accredited by the International Center for Clubhouse Development.

~~a. b.~~ Providers responsible for the payroll of ~~consumers~~ members shall have policies that ensure compliance with state and federal labor laws and regulations, which include, but are not limited to:

- (1) ~~Consumer~~ Member vacation, sick leave and holiday compensation.
- (2) Procedures for payment schedules and pay scale.
- (3) Procedures for provision of workers' compensation insurance.
- (4) Procedures for the determination and review of commensurate wages.
- ~~(5) Both state and federal department of labor requirements.~~

~~b. c.~~ The department shall ~~certify~~ will contract only with public or private agencies to provide supported employment services. The department does not recognize individuals as service providers under the supported employment program.

ITEM 38. Amend subrule 77.39(20) as follows:

77.39(20) Adult day care providers. Adult day care providers shall be agencies that are certified by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

ITEM 39. Amend subrule 77.39(24) as follows:

77.39(24) Consumer-directed attendant care ~~service~~ providers. The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide attendant care service and who is:

- (1) At least 18 years of age.
- (2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.
- (3) Not the spouse of the ~~consumer~~ member or a parent or stepparent of a ~~consumer~~ member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on the behalf of a ~~consumer~~ member who receives home- and community-based services.

~~b. Home care providers that have a contract with the department of public health or have written certification from the department of public health stating they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the

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department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

g. Assisted living programs that are ~~voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. Adult day service providers ~~that meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and that have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 40. Amend subrule 77.39(25) as follows:

77.39(25) *Interim medical monitoring and treatment providers.*

a. The following providers may provide interim medical monitoring and treatment services:

(1) Child care facilities, which are defined as child care centers licensed pursuant to 441—Chapter 109, preschools, or child development homes registered pursuant to 441—Chapter 110.

(2) to (5) No change.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to ~~consumers~~ members shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the ~~consumer~~ member or a parent or stepparent of the ~~consumer~~ member if the ~~consumer~~ member is aged 17 or under.

(3) Not be a usual caregiver of the ~~consumer~~ member.

(4) Be qualified by training or experience, ~~as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan,~~ to provide medical intervention or intervention in a medical emergency necessary to carry out the ~~consumer's~~ member's plan of care. The training or experience required must be determined by the member's usual caregivers and a licensed medical professional on the member's interdisciplinary team and must be documented in the member's service plan.

c. Service documentation. Providers shall maintain clinical and fiscal records necessary to fully disclose the extent of services furnished to ~~consumers~~ members. Records shall specify by service date the procedures performed, together with information concerning progress of treatment.

ITEM 41. Amend subrule 77.41(2) as follows:

77.41(2) *Consumer-directed attendant care providers.* The following providers may provide consumer-directed attendant care service:

a. An individual who contracts with the ~~consumer~~ member to provide consumer-directed attendant care and who is:

(1) At least 18 years of age.

(2) Qualified by training or experience to carry out the ~~consumer's~~ member's plan of care pursuant to the department-approved case plan or individual comprehensive plan.

(3) Not the spouse or guardian of the ~~consumer~~ member or a parent or stepparent of a member aged 17 or under.

(4) Not the recipient of respite services paid through home- and community-based services on behalf of a ~~consumer~~ member who receives home- and community-based services.

b. Home care providers ~~that have a contract with the department of public health or have written certification from the department of public health stating that they meet the home care standards and requirements set forth in department of public health rules 641—80.5(135), 641—80.6(135), and 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

c. to f. No change.

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g. Assisted living programs that are ~~voluntarily accredited or certified by the department of elder affairs inspections and appeals under 481—Chapter 69.~~

h. Adult day service providers ~~which meet the conditions of participation for adult day care providers as specified at 441—subrule 77.30(3), 77.33(1), 77.34(7), or 77.39(20) and which have provided a point-in-time letter of notification from the department of elder affairs or an area agency on aging stating the adult day service provider also meets the requirements of department of elder affairs rules in 321—Chapter 25 that are certified by the department of inspections and appeals under 481—Chapter 70.~~

ITEM 42. Amend subparagraphs **77.46(5)“a”(6)** and **(7)** as follows:

(6) ~~Home care agencies that meet the requirements set forth in department of public health rule 641—80.7(135).~~ Agencies authorized to provide similar services through a contract with the department of public health (IDPH) for local public health services. The agency must provide a current IDPH local public health services contract number.

(7) Adult day care providers that are certified in good standing by the department of inspections and appeals as being in compliance with the standards for adult day services programs ~~adopted by the department of elder affairs at 321—Chapter 24 at 481—Chapter 70.~~

[Filed 12/8/10, effective 3/1/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9315B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

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

This amendment extends the time in which the physician may sign a home health agency plan of care to conform to Medicare policy. The current Medicaid standard is that the physician's signature shall be dated within the certification period. Medicare allows the plan to be signed any time before the claim for home health agency services is submitted for reimbursement. Having different standards for Medicare and Medicaid is confusing for physicians and home health agencies.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9111B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations because the amendment provides a benefit to home health agencies.

The Council on Human Services adopted this amendment on December 8, 2010.

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

This amendment shall become effective on February 2, 2011.

The following amendment is adopted.

Amend paragraph **78.9(1)“1”** as follows:

l. ~~Physician's signature and date. The date of the signature shall be within the certification period.~~ The plan of care must be signed and dated by the physician before the claim for service is submitted for reimbursement.

[Filed 12/8/10, effective 2/2/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9316B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments allow pharmacies that administer the influenza vaccine available through the Vaccines for Children (VFC) program to receive reimbursement for administration of the vaccine to Medicaid members.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 6, 2010, as **ARC 9132B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin as **ARC 9133B** on the same date. The Department received two comments on the Notice of Intended Action. Both supported the change, but there were concerns about reimbursement.

The Iowa Pharmacy Association pointed out that the reimbursement is not the same as what a physician or clinic would receive, since there is no office visit fee connected with the service, and that other states pay a higher dispensing fee. Although the Iowa fee schedule and billing codes are the same for all providers, the Department acknowledges that other insurers reimburse at a higher rate for vaccine administration and is analyzing the current fee schedule for this service.

These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

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

The Council on Human Services adopted these amendments on December 8, 2010.

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

These amendments shall become effective February 2, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 441—78.42(249A):

441—78.42(249A) Pharmacies administering influenza vaccine to children. Payment will be made to a pharmacy for the administration of influenza vaccine available through the vaccines for children program administered by the department of public health if the pharmacy is enrolled in the vaccines for children program. No payment will be made for the vaccine.

ITEM 2. Amend subrule **79.1(2)** by adopting the following **new** provider category:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Pharmacy administration of influenza vaccine to children	Physician fee schedule for immunization administration	Fee schedule in effect 11/30/09 less 5%.

[Filed 12/8/10, effective 2/2/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.

ARC 9318B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services rescinds Chapter 101, "Iowa State Juvenile Home," and adopts new Chapter 101, "Iowa Juvenile Home," and rescinds Chapter 103, "Eldora Training School," and adopts new Chapter 103, "State Training School," Iowa Administrative Code.

These amendments update the rules for the Iowa Juvenile Home at Toledo and the State Training School at Eldora and Toledo. The amendments reorganize, update, and clarify existing rules on admission procedures, communication with individuals residing in these facilities, employment of those individuals, alleged child abuse in the facility, approval of temporary home visits, tours of the facility and public use of buildings and grounds. Specific changes include:

- Adding more definitions of terms;
- Expanding the list of persons who shall be denied visiting rights;
- Requiring supervision by an adult family member during a visit by a family member under the age of 18 (formerly age 12);
- Conforming Chapter 103 to the requirements of 2009 Iowa Code Supplement chapter 692A regarding sex offender registration to reflect the implementation of 2009 Iowa Acts, chapter 119.

Additional rules for the Iowa Juvenile Home and the State Training School address:

- Population guidelines and criteria for accepting youth into care;
- Photographing and recording of individuals;
- Recovery of the cost of care from individuals with unearned income; and
- Procedures for donations to the facility.

Rules on program assignment at the Iowa Juvenile Home and on charges for use of facility buildings and grounds have been deleted, as have the rules for the State Training School regarding the following topics:

- Detention;
- Standards;
- Advisory committee;
- Risk assessment for sex offenders; and
- Public notification regarding sex offenders.

These amendments provide for grievance procedures but not for waivers. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 22, 2010, as **ARC 9086B**. The Department received no comments on the Notice of Intended Action.

One nonsubstantive change has been made to the amendments published under Notice of Intended Action: The term "juvenile home" has been changed to "Iowa juvenile home" in Chapter 101. Another change has been made for clarity to the language in subrule 103.7(2) by changing "in advance of the visit being" to "before the visit is." Subrule 103.7(2) has been revised to read as follows:

"103.7(2) The superintendent or designee and the individual's juvenile court officer shall approve a temporary home visit before the visit is scheduled and only after the juvenile court officer has investigated and approved in writing the temporary home visit placement."

In addition, the implementation sentences of rules 441—101.13(8,218) and 441—103.13(8,218) have been expanded to include Iowa Code section 218.4.

The Council on Human Services adopted these amendments on December 8, 2010.

These amendments are intended to implement Iowa Code section 8.7 and chapters 218, 233A and 233B and 2009 Iowa Code Supplement section 692A.109.

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These amendments shall become effective on February 2, 2011.

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 [Chs 101, 103] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9086B**, IAB 9/22/10.

[Filed 12/8/10, effective 2/2/11]

[Published 12/29/10]

[For replacement pages for IAC, see IAC Supplement 12/29/10.]

ARC 9308B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts an amendment to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXIII; No. 9, p. 692, on November 3, 2010, as **ARC 9197B**.

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes shall be 5 percent for the calendar year 2011 (0.4% per month). The Department shall also pay interest at the 5 percent rate on refunds. The rate for calendar year 2010 was also 5 percent (0.4% per month).

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective February 2, 2011, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

Adopt the following **new** subrule 10.2(30):

10.2(30) Calendar year 2011. The interest rate upon all unpaid taxes which are due as of January 1, 2011, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2011. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2011. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2011.

[Filed 12/8/10, effective 2/2/11]

[Published 12/29/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/29/10.