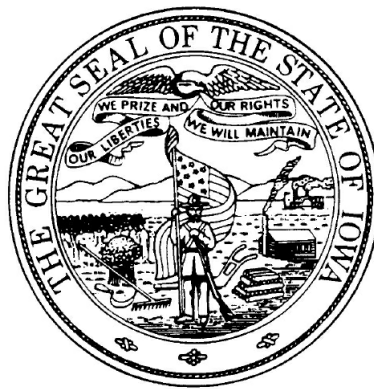


State of Iowa

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Code
Supplement

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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

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PROCEDURE FOR DETERMINING THE COMPETITIVENESS
OF A COMMUNICATIONS SERVICE OR FACILITY

[Prior to 10/8/86, Commerce Commission[250]]

199—5.1(476) Purpose. These rules govern the procedure for investigating and determining the applicable level of regulation for a communications service or facility pursuant to Iowa Code section 476.1D.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.2(476) Petition.

5.2(1) *Petitioner.* Any interested person may petition the board for a determination of the following under Iowa Code section 476.1D.

a. Whether a communications service or facility provided or proposed to be provided by a telephone utility in Iowa is subject to effective competition;

b. Whether a communications service or facility provided or proposed to be provided by a telephone utility in Iowa, which is subject to effective competition, is an essential communications service or facility and the public interest warrants service regulation;

c. Whether a communications service or facility, which previously has been deregulated, is no longer subject to effective competition and rate and service regulation should be reimposed; or

d. Whether a communications service or facility, which previously has been deregulated and which continues to be subject to effective competition, is an essential communications service and the public interest warrants service regulation, and service regulation only should be reimposed.

5.2(2) *Contents of petition.* A petition for a determination under subrule 5.2(1) shall contain or be submitted with the following information:

a. The specific service or facility which the petitioner is asking the board to consider;

b. Data sufficient to support a prima facie finding that the service or facility is or is no longer subject to effective competition or is an essential communications service or facility and the public interest warrants service regulation;

c. In a petition for determination of whether a communications service or facility is subject to effective competition, an identification of all persons or parties who are actual or potential competitive providers of the service or facility.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.3(476) Docketing.

5.3(1) *Order.* If the petitioner has complied with subrule 5.2(2), the board shall issue an order docketing the matter and setting a procedural schedule.

5.3(2) *Responses.* Any person, including the consumer advocate, wanting to file a response to a petition must do so within 30 days of the filing of the petition or as otherwise directed by the board in its order docketing the matter.

5.3(3) *Notice.* Upon docketing, the board will cause notice of the proceeding to be published in the Iowa Administrative Bulletin. The board may also require specific notice to persons identified as competitors.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.4(476) Comments. All comments shall be sworn and shall be filed within 30 days after publication of notice of the proceeding in the Iowa Administrative Bulletin unless otherwise directed by the board. Reply comments may be allowed at the discretion of the board. Comments shall be filed electronically unless otherwise allowed by the board.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.5(476) Formal proceeding. The board may schedule an oral argument, evidentiary hearing, or other formal proceeding as appropriate to allow all interested persons the opportunity to address the issues raised in the petition and any comments filed with the board. All persons filing comments will be

required to appear at any formal proceeding that may be held. If the board holds an evidentiary hearing, all persons filing comments shall have at least one witness available who may be cross-examined about the subject matter of the comments.

[ARC 4414C, IAB 4/24/19, effective 5/29/19]

199—5.6(476) Decision.

5.6(1) *Criteria for effective competition.* In determining whether a service or facility is subject to effective competition, the board will consider whether a comparable service or facility is available from a supplier other than the telephone utility and whether market forces are sufficient to ensure just and reasonable rates without regulation. In addition, the board may consider the following criteria:

- a. The ability or inability of a single provider to determine or control prices;
- b. The ease with which other providers may enter the market;
- c. The likelihood that other providers will enter the market;
- d. The substitutability of one service or facility for another; and
- e. Other relevant considerations.

5.6(2) *Criteria to retain service regulation.* In determining whether a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation under Iowa Code subsection 476.1D(5) or 476.1D(7), the board may consider all or part of the following criteria:

- a. Relative universality of customer use of the service or facility;
- b. Degree to which the service or facility is necessary to access the telecommunications network;
- c. Extent to which the public, subsets of the public, or individuals rely on the service or facility;
- d. Potential for harm and its relative impact in the event of inadequate service quality;
- e. Any economic incentives which might discourage reasonable service quality;
- f. Existence of subcategories within a category of generally competitive services or facilities where the competition is ineffective to ensure reasonable service quality for the subcategory; and
- g. Other relevant considerations.

5.6(3) *Findings.* After the completion of formal proceedings, the board may issue findings.

199—5.7(476) Extent of deregulation. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board will deregulate rates and may continue service regulation.

No provider of the service or facility will be subject to greater or lesser regulatory control because of its alleged market share or market power.

Any deregulation under these rules, whether deregulation of rates and service or deregulation of rates only, will involve separation of the accounts of the deregulated competitive service or facility from the accounts of the telephone utility's regulated operation.

Deregulation of a service or facility for a utility is effective only after all of the following:

- a. A finding of effective competition by the board;
- b. Election by a utility providing the service or facility to file a deregulation accounting plan;
- c. Approval of a utility's deregulation accounting plan by the board.

199—5.8(476) Hearing and order. Rescinded IAB 4/24/19, effective 5/29/19.

These rules are intended to implement Iowa Code chapter 476 and Iowa Code section 546.7.

[Filed 6/14/85, Notice 4/24/85—published 7/3/85, effective 8/7/85]

[Filed emergency 9/18/86—published 10/8/86, effective 9/18/86]

[Filed 3/27/92, Notice 8/21/91—published 4/15/92, effective 5/20/92]

[Filed 1/29/93, Notice 9/30/92—published 2/17/93, effective 3/24/93]

[Filed ARC 4414C (Notice ARC 4283C, IAB 2/13/19), IAB 4/24/19, effective 5/29/19]

CHAPTER 167
JUVENILE DETENTION REIMBURSEMENT
[Prior to 2/11/87, Human Services [498]]

DIVISION I
ANNUAL REIMBURSEMENT PROGRAM

441—167.1(232) Definitions.

“*Allowable costs*” means those expenses of the county or multicounty related to the establishment, improvements, operation, and maintenance of county or multicounty juvenile detention homes.

“*County or multicounty*” means that the governing body is a county board of supervisors or a combination of members of participating county boards of supervisors.

“*Detained*” means the period of time a youth is physically occupying a bed in a juvenile detention home (that is, from the time of intake at the juvenile detention home (nothing prior to this) to the time a youth is discharged from the bed at the home (nothing after this)).

“*Eligible costs*” are those allowable costs that are directly attributable to the function of detaining youth in the home, from the point of intake through discharge from the home, as further defined in subrule 167.3(3).

[ARC 8716B, IAB 5/5/10, effective 7/1/10; ARC 3681C, IAB 3/14/18, effective 5/1/18]

441—167.2(232) Availability of funds. Any year that the Iowa legislature makes funds available for this program, the department shall accept requests for reimbursement from eligible facilities.

441—167.3(232) Eligible detention homes. County and multicounty juvenile detention homes shall be eligible for reimbursement under this program when:

167.3(1) The home is approved by the department under the standards of Iowa Code chapter 232 and IAC 441—Chapter 105.

167.3(2) The home submits the completed forms in paragraphs 167.3(2)“a” and 167.3(2)“b” by March 15 and the certified audit in paragraph 167.3(2)“c” by March 15 or within ten days of completion if after March 15 of the year following the conclusion of the state fiscal year for which reimbursement will be made. The home shall have an independent certified public accountant or an independent accounting firm complete the financial and statistical report in paragraph 167.3(2)“b” and certify the fair presentation of the report. The preparer shall have the experience necessary to complete the report in accordance with generally accepted accounting principles (GAAP) and the instructions for completing the financial and statistical report.

a. A written statement delivered in printed form or via electronic mail identifying the eligible total net cost that will be claimed under rule 441—167.5(232).

b. An electronic copy of the department-authorized financial and statistical report for juvenile detention homes.

c. An electronic copy of the home’s certified audit containing financial information for the period for which reimbursement is being claimed.

167.3(3) The department has reviewed the information submitted and determined that the costs to be claimed meet eligibility requirements. Eligible costs shall be determined by using a cost allocation methodology that follows generally accepted accounting principles (GAAP). Eligible costs shall be based on the portions of the allowable costs that are directly attributable to the function of detaining youth in the home.

a. Costs are not eligible for reimbursement if a supplemental funding, reimbursement, or refund source is available to the home. County payments to an eligible home for the function of detaining youth in the home (“care and keep”) are not considered to be supplemental funding, reimbursement, or refund sources for the purpose of this subrule. Ineligible costs include, but are not limited to:

(1) Refundable deposits.

(2) Services funded by sources other than the juvenile detention reimbursement program.

(3) Operational activities such as the food and nutrition program that is funded by the Iowa department of education.

b. Costs attributed to portions of the home not directly used for detaining children are not eligible for reimbursement.

c. Costs of alternatives to detaining youth in the approved detention home are not eligible for reimbursement. Services ineligible for reimbursement include, but are not limited to:

(1) Community tracking and monitoring activities.

(2) Transportation during the time a youth is detained that is not related to service or care and keep or that is the responsibility of or funded by another source.

(3) Outreach services.

(4) In-home detention.

d. Capital expenses shall be depreciated over the useful life of the item following generally accepted accounting principles. The annual depreciated amount for items that are eligible costs may be claimed for reimbursement.

(1) Capital expenses shall include items costing more than \$5,000 that have a useful life of over two years.

(2) Depreciation schedules shall be filed annually as needed.

[ARC 8716B, IAB 5/5/10, effective 7/1/10; ARC 3681C, IAB 3/14/18, effective 5/1/18; ARC 4411C, IAB 4/24/19, effective 5/29/19]

441—167.4(232) Available reimbursement. The reimbursement for the participating detention homes shall be based on the distribution formula authorized by Iowa law.

[ARC 3681C, IAB 3/14/18, effective 5/1/18]

441—167.5(232) Submission of voucher. Eligible detention homes shall submit a complete signed and dated Form GAX, General Accounting Expenditure, to the department to claim reimbursement.

167.5(1) Form GAX shall be submitted to the Department of Human Services, Division of Fiscal Management, First Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, by August 1.

167.5(2) The Form GAX shall include the total net eligible costs incurred between July 1 and June 30 of the year covered by the reimbursement. These costs will be used to calculate the reimbursement amount based on the distribution formula authorized by Iowa law.

167.5(3) Only detention homes that submit Form GAX by August 1 shall receive reimbursement.

[ARC 8716B, IAB 5/5/10, effective 7/1/10; ARC 3681C, IAB 3/14/18, effective 5/1/18]

441—167.6(232) Reimbursement by the department. Reimbursement shall be made to those participating juvenile detention homes that have complied with these rules.

[ARC 3681C, IAB 3/14/18, effective 5/1/18]

These rules are intended to implement Iowa Code section 232.142.

441—167.7 to 167.10 Reserved.

DIVISION II
SEVENTY-TWO HOUR REIMBURSEMENT PROGRAM
Reserved

[Filed 11/18/83, Notice 5/25/83—published 12/7/83, effective 2/1/84]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

[Filed emergency 9/11/92—published 9/30/92, effective 10/1/92]

[Filed 11/10/92, Notice 9/30/92—published 12/9/92, effective 2/1/93]

[Filed 4/13/95, Notice 3/1/95—published 5/10/95, effective 7/1/95]

[Filed 7/15/99, Notice 6/2/99—published 8/11/99, effective 10/1/99]

[Filed ARC 8716B (Notice ARC 8527B, IAB 2/10/10), IAB 5/5/10, effective 7/1/10]

[Filed ARC 3681C (Notice ARC 3546C, IAB 1/3/18), IAB 3/14/18, effective 5/1/18]

[Filed ARC 4411C (Notice ARC 4126C, IAB 11/21/18), IAB 4/24/19, effective 5/29/19]

CHAPTER 14
FLOOD MITIGATION PROGRAM

605—14.1(418) Purpose. In accordance with Iowa Code section 418.7, the flood mitigation board establishes the policies and procedures for the creation and administration of an Iowa flood mitigation program.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.2(418) Definitions.

“*Board*” means the flood mitigation board as created in Iowa Code section 418.5.

“*Department*” means the department of homeland security and emergency management.

“*Director*” means the director of the department of homeland security and emergency management.

“*Governmental entity*” means any of the following:

1. A county.
2. A city.
3. A joint board or other legal or administrative entity established or designated in an agreement pursuant to Iowa Code chapter 28E or 28F between any of the following:
 - Two or more cities located in whole or in part within the same county.
 - A county and one or more cities that are located in whole or in part within the county.
 - A county, one or more cities that are located in whole or in part within the county, and a drainage district formed by mutual agreement under Iowa Code section 468.142 located in whole or in part within the county.
 - One or more counties, one or more cities that are located in whole or in part within those counties, and one or more sanitary districts established under Iowa Code chapter 358 or a combined water and sanitary district as provided for in Iowa Code sections 357.1B and 358.1B, located in whole or in part within those counties.

“*Project*” means the construction and reconstruction of levees, embankments, impounding reservoirs, conduits or other means that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of Iowa Code section 418.4.

“*Sales tax*” means the sales and services tax imposed pursuant to Iowa Code section 423.2.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 2220C, IAB 10/28/15, effective 12/2/15]

605—14.3(418) Flood mitigation board.

14.3(1) The flood mitigation board is established and housed, for administrative purposes, within the department. The director shall provide office space, staff assistance, supplies and equipment, and budget funds to pay the necessary expenses of the board.

14.3(2) The board shall be comprised of nine voting members and five ex-officio nonvoting members.

a. The voting members shall include all of the following:

(1) Four members of the general public appointed by the governor and confirmed by the senate in accordance with Iowa Code sections 69.16 and 69.16A. These members shall be appointed to three-year staggered terms, and the terms shall commence and end as provided in Iowa Code section 69.19.

1. Two members of the general public shall have demonstrable experience or expertise in the field of natural disaster recovery.

2. Two members of the general public shall have demonstrable experience or expertise in the field of flood mitigation.

(2) The director of the department of natural resources or the director’s designee.

(3) The secretary of agriculture or the secretary’s designee.

(4) The director of the department or the director’s designee.

- (5) The treasurer of state or the treasurer's designee.
- (6) The executive director of the Iowa finance authority or the executive director's designee.
 - b. The ex-officio nonvoting members shall include the following:
 - (1) A member of the general assembly appointed by the majority leader of the senate.
 - (2) A member of the general assembly appointed by the minority leader of the senate.
 - (3) A member of the general assembly appointed by the speaker of the house of representatives.
 - (4) A member of the general assembly appointed by the minority leader of the house of representatives.
- (5) The director of the department of revenue or the director's designee.

14.3(3) The governor shall designate a chairperson and vice chairperson from the voting members.

14.3(4) The board shall meet at a time and place determined by the board. Additional meetings may be called by:

- a. The chairperson,
- b. The vice chairperson, or
- c. The director.

14.3(5) All meetings of the board are public meetings and shall be conducted in accordance with Iowa Code chapter 21. A majority of the voting members constitutes a quorum.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 2220C, IAB 10/28/15, effective 12/2/15]

605—14.4(418) Flood mitigation project eligibility.

14.4(1) An eligible applicant is a governmental entity as defined in rule 605—14.2(418).

14.4(2) Eligible project types include construction and reconstruction of levees, embankments, impounding reservoirs, conduits, or other means that are necessary for the protection of property from the effects of floodwaters and may include the deepening, widening, alteration, change, diversion, or other improvement of watercourses if necessary for the protection of such property from the effects of floodwaters. A project may consist of one or more phases of construction or reconstruction that are contracted for separately if the larger project, of which the project is a part, otherwise meets the requirements of this subrule.

14.4(3) For the project to be eligible for flood mitigation funding from the sales tax increment fund, the project, or an earlier phase of the project, is required to have been approved to receive federal financial assistance under the Water Resources Development Act (WRDA), the Environmental Protection Agency (EPA), or other federal programs providing assistance specifically for hazard mitigation. Prior to submission of an application, a governmental entity shall request a report from the Iowa department of revenue that provides recent historical data on sales tax revenue and trends in sales tax revenue growth. If a project is eligible for state financial assistance under Iowa Code section 29C.6(17), such project is ineligible for flood mitigation funding under this chapter. The federal award must be in an amount equal to at least 20 percent of the total project cost or \$30 million, whichever is less.

14.4(4) For the project to be eligible for flood mitigation funding from the flood mitigation fund or sales tax increment fund, the governmental entity shall provide a local match of at least 50 percent of the total cost of the project less any federal financial assistance. The sales tax increment shall fund a maximum of 50 percent of the total project cost. The federal share of the total project cost shall be a minimum of 20 percent of the total project cost or \$30 million, whichever is less. The local match, when combined with the federal share, shall fund a minimum of 50 percent of the total project cost. The governmental entity shall provide funding for the local match.

14.4(5) The project must result in nonpublic investment in the governmental entity's area, as defined in Iowa Code section 418.11(3), of an amount equal to 50 percent of the total cost of the project. For purposes of this subrule, "nonpublic investment" means investment by nonpublic entities consisting of capital investment or infrastructure improvements occurring in anticipation of or as a result of the project during the period of time between July 1, 2008, and ten years after the board approves the project.

14.4(6) A governmental entity shall not seek approval from the board for a project if the governmental entity previously had a board-approved project or if the governmental entity was part of a governmental entity as defined in rule 605—14.2(418) that had a board-approved project.
[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.5(418) Applications.

14.5(1) The board shall prescribe the form of the application, instructions and associated documents. Applications, instructions, programmatic guidance and forms are available through the department and its website, www.homelandsecurity.iowa.gov.

14.5(2) A governmental entity shall submit an application to the board for approval of a project plan prior to January 1, 2016.

14.5(3) The application shall specify whether the governmental entity is requesting financial assistance from the flood mitigation fund or approval for the use of sales tax revenues. Applications for financial assistance from the flood mitigation fund shall describe the type and amount of assistance requested. Applications for the use of sales tax revenues shall state the amount of sales tax revenues necessary for completion of the project and shall contain a report from the Iowa department of revenue, as requested by the governmental entity, that provides recent historical data on sales tax revenue and trends in sales tax revenue growth.

14.5(4) Each application shall include or have attached to the application the governmental entity's project plan adopted under Iowa Code section 418.4(2). The application package shall include all of the following:

- a. The project plan that includes:
 - (1) A detailed description of the project, including all phases of construction or reconstruction included in the project, maintenance plans for the completed project, the estimated cost of the project, and the maximum amount of debt to be incurred for purposes of funding the project; and
 - (2) A detailed description of all anticipated funding sources for the project, including information relating to either the proposed use of financial assistance from the flood mitigation fund or the proposed use of sales tax increment revenues.
- b. A copy of the application for federal funds and subsequent approval letter as specified under Iowa Code section 418.4(3) "b."
- c. A detailed budget.
- d. A statement about whether the project is designed to mitigate future flooding of existing property and infrastructure that have sustained significant flood damage and are likely to sustain significant flood damage in the future. Detailed information on the existing property and infrastructure shall be included.
- e. A statement about whether the project plan addresses the impact of flooding both upstream and downstream from the area where the project is to be undertaken and whether the project conforms to any applicable floodplain ordinance.
- f. A statement about whether the area that would benefit from the project's flood mitigation efforts is sufficiently valuable to the economic viability of the state or is of sufficient historic value to the state to justify the cost of the project.
- g. A statement about the extent to which the project would utilize local matching funds. The board shall not approve a project unless at least 50 percent of the total cost of the project, less any federal financial assistance for the project, is funded using local matching funds, and unless the project will result in nonpublic investment in the governmental entity's area, as defined in Iowa Code section 418.11(3), of an amount equal to 50 percent of the total cost of the project. For purposes of this paragraph, "nonpublic investment" means investment by nonpublic entities consisting of capital investment or infrastructure improvements occurring in anticipation of or as a result of the project during the period of time between July 1, 2008, and ten years after the board approves the project.
- h. A statement about the extent of nonfinancial support committed to the project from public and nonpublic sources.

i. A statement about whether the project is designed in coordination with other watershed management measures adopted by the governmental entity or adopted by the participating jurisdictions of the governmental entity, as applicable.

j. A statement about whether the project plan is consistent with the applicable comprehensive, countywide emergency operations plan in effect and other applicable local hazard mitigation plans.

k. A statement about whether financial assistance through the flood mitigation program is essential to meet the necessary expenses or serious needs of the governmental entity related to flood mitigation.

l. Any other documents requested by the board to assist the board in the consideration of the application.

m. If the governmental entity intends to issue bonds in accordance with Iowa Code section 418.14, the governmental entity shall provide information from the proposed bonding company as to the viability of the bond issuance.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.6(418) Flood mitigation fund.

14.6(1) A flood mitigation fund is created as a separate and distinct fund in the state treasury under the control of the board and consists of money appropriated by the general assembly and any other moneys available to and obtained or accepted by the board for placement in the fund. Payments of interest, repayments of moneys loaned, and recaptures of grants provided by the board shall be deposited in the fund.

14.6(2) Moneys in the fund shall be used by the board to provide financial assistance in accordance with this chapter to a governmental entity in the form of grants, loans and forgivable loans. The board shall specify the terms of any grants or loans made from the fund. The board may make a multiyear commitment to a governmental entity of up to \$4 million in any one fiscal year.

14.6(3) Moneys received by a governmental entity from the fund shall be deposited in the governmental entity's flood project fund as created in rule 605—14.8(418).

14.6(4) If any portion of the moneys appropriated to the fund have not been awarded during the fiscal year in which they were appropriated, the portion which has not been awarded may be utilized by the board to provide financial assistance in subsequent fiscal years.

14.6(5) Following completion of all projects approved to utilize financial assistance from the fund and upon determination by the board that the remaining funds are no longer needed for the program, the funds that were appropriated by the general assembly shall be credited to the general fund of the state. Other funds shall be credited to the granting agency in accordance with any grant agreements.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.7(418) Sales tax increment calculation and sales tax increment fund. The calculation of the sales tax increment and operation of the fund is addressed in Iowa department of revenue 701—Chapter 238.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.8(418) Flood project fund.

14.8(1) Each governmental entity that has a project approved by the board and is awarded funds from either the flood mitigation fund or sales tax increment fund shall create a separate flood project fund. The fund shall be used to pay the costs associated with the governmental entity's approved project, to reimburse the governmental entity for the costs of the approved project incurred after the project's approval, and to pay the principal and interest on bonds issued pursuant to Iowa Code section 418.14.

14.8(2) The governmental entity may deposit any other moneys lawfully received into the fund. Other moneys include but are not limited to local sales and services tax receipts collected under Iowa Code chapter 423B.

[ARC 1114C, IAB 10/16/13, effective 11/20/13; ARC 4410C, IAB 4/24/19, effective 5/29/19]

605—14.9(418) Board application review.

14.9(1) The board shall not approve a project for inclusion in the program if the application is received after January 1, 2016.

14.9(2) The board may request an independent engineering review of the project to determine the technical feasibility, engineering standards, and total estimated cost of the project. Such review may be completed by the United States Army Corps of Engineers. All costs related to the review shall be the responsibility of the governmental entity.

14.9(3) The board shall not approve any project plan that includes financial assistance pursuant to this chapter that would be used to pay principal and interest on or refinance any debt or other obligation existing prior to the approval of the project.

14.9(4) The board shall not approve a project plan application for which the amount of sales tax increment revenue remitted to the governmental entity would exceed \$15 million in any one fiscal year or if approval of the project would result in total remittances in any one fiscal year for all approved projects to exceed, in the aggregate, \$30 million.

14.9(5) The board may contract with or otherwise consult with the Iowa flood center, established in Iowa Code section 466C.1, to assist in administering the flood mitigation program and review of applications.

14.9(6) The board, after consulting with the economic development authority, shall approve, defer, or deny the applications.

14.9(7) If the application is denied, the board shall state the reasons for the denial. The governmental entity may resubmit the application for consideration anytime prior to January 1, 2016.

14.9(8) If the application is approved, the board shall specify whether the governmental entity is approved for use of the sales tax revenues under Iowa Code section 418.12 or whether the governmental entity is approved to receive financial assistance from the flood mitigation fund under Iowa Code section 418.10.

14.9(9) If the board approves an application that includes the use of sales tax increment revenues, the board shall establish the annual maximum amount of such revenues that may be remitted to the governmental entity not to exceed \$15 million or 70 percent of the total yearly amount of increased sales tax revenue in the governmental entity's applicable area and deposited in the governmental entity's account, whichever is less. The board may, however, establish remittance limitations for the project lower than those specified in this subrule.

14.9(10) If the board approves an application that includes financial assistance from the flood mitigation fund, the board shall negotiate and execute on behalf of the department all necessary agreements to provide such financial assistance.

14.9(11) Upon approval of an application for financial assistance under the program, the board shall notify the treasurer of state regarding the amount of moneys needed to satisfy the award of financial assistance and the terms of the award.

14.9(12) If, following approval of an application, it is determined that the amount of federal financial assistance exceeds the amount of federal financial assistance specified in the application, the board shall reduce the award of financial assistance from the flood mitigation fund or reduce the amount of sales tax revenue to be received for the project by a corresponding amount.

14.9(13) Following the approval of an application which proposes to use sales tax increment revenues, the governmental entity shall adopt a resolution authorizing the use of sales tax increment from the governmental entity's flood project fund. Within ten days of adoption, the governmental entity shall provide a copy of the resolution to the Iowa department of revenue.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.10(418) Reports.

14.10(1) Following the approval of a project application, the governmental entity shall, on or before December 15 of each year, submit a report to the board detailing the following:

- a. The current status of the project.
- b. The total expenditures and types of expenditures that have been made related to the project.
- c. The amount of total project cost remaining as of the date the report is submitted.

d. The amounts, types, and sources of funding being used.
e. The amount of bonds issued or other indebtedness incurred for the project, including information related to the rate of interest, length of term, cost of issuance, and net proceeds. This report shall also include the amounts and types of moneys used for payment of such bonds or indebtedness.

14.10(2) The board shall submit a written report to the governor and the general assembly on or before January 15 of each year. The report shall contain information relating to all projects that have been approved by the board and contain summaries of the individual project reports required by this chapter. The board shall also convey in the report any recommendations for legislative action to modify this chapter.

14.10(3) The treasurer of state shall report to the department any moneys that are disbursed to a recipient of financial assistance under the program.

14.10(4) Any governmental entity that receives assistance in the form of sales tax revenues under the program shall provide to the board all reports that are required as part of receiving federal financial assistance.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

605—14.11(418) Flood project bonds. A governmental entity receiving sales tax revenues in accordance with this chapter is authorized to issue bonds that are payable from revenues deposited in the flood project fund created in rule 605—14.8(418). Issuance and administration of such bonds shall be done in accordance with Iowa Code sections 418.14 and 384.83.

[ARC 1114C, IAB 10/16/13, effective 11/20/13]

These rules are intended to implement Iowa Code chapter 418.

[Filed ARC 1114C (Notice ARC 0956C, IAB 8/21/13), IAB 10/16/13, effective 11/20/13]

[Filed ARC 2220C (Notice ARC 2119C, IAB 9/2/15), IAB 10/28/15, effective 12/2/15]

[Filed ARC 4410C (Notice ARC 4314C, IAB 2/27/19), IAB 4/24/19, effective 5/29/19]

DENTAL BOARD[650]

[Prior to 5/18/88, Dental Examiners, Board of[320]]

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CHAPTER 16
PRESCRIBING, ADMINISTERING, AND DISPENSING DRUGS
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—16.1(124,153,155A) Definitions.

“*Authorized delegate*” means a licensed or registered health care professional, such as a dental hygienist, dental assistant or registered nurse, who has obtained PMP log-in credentials. A dental assistant trainee may not serve as an authorized delegate.

“*Controlled substance*” means a drug or other substance listed in division II of Iowa Code chapter 124.

“*Opioid*” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“*Prescription drug*” means a drug, as classified by the United States Food and Drug Administration, that is required to be prescribed or administered to a patient by a practitioner prior to dispensation.

“*Prescription monitoring program*” or “*PMP*” means the information program for drug prescribing and dispensing administered by the Iowa board of pharmacy.

[ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—16.2(153) Scope of authority and prescribing requirements.

16.2(1) A license to practice dentistry issued by this board permits the licensee to prescribe, administer, or dispense prescription drugs if the use is directly related to the practice of dentistry and is within the scope of the dentist-patient relationship. Registration with the federal Drug Enforcement Administration and the Iowa board of pharmacy further extends this privilege to controlled substances.

16.2(2) Prescribing by a licensed dentist must be directly related to the practice of dentistry. A dental examination and medical history must be taken before a dentist initially prescribes, administers, or dispenses a prescription drug to a patient, except for patients who receive fluoride dispensed under protocols approved by the bureau of oral and health delivery systems of the department of public health. A prescription drug prescribed, administered, or dispensed by a licensed dentist must be for a diagnosed condition and be included in a dental treatment plan. The patient’s dental record must contain written evidence of the examination and medical history.

16.2(3) On each occasion when a prescription drug is prescribed, administered, or dispensed to a patient, an entry must be made in the patient’s dental record containing the following information: the name, quantity, and strength of the prescription drug; the directions for its use; the date of issuance; and the condition for which the prescription drug was used.

16.2(4) The prescribing, administering, and dispensing of prescription drugs shall be done in accordance with all applicable state and federal laws.

16.2(5) When controlled substances are purchased, administered, or dispensed, a dentist shall maintain records and accountability in accordance with 657—Chapter 10.

16.2(6) A dentist shall not self-prescribe or self-administer controlled substances.

16.2(7) Prescribing, administering, or dispensing controlled substances to members of the licensee’s immediate family is prohibited, except in the case of an acute dental condition or on an emergency basis for a dental condition when the licensee conducts an examination, establishes a patient record, and maintains proper documentation.

[ARC 3987C, IAB 8/29/18, effective 10/3/18; ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—16.3(153) Dispensing—requirements for containers and labeling.

16.3(1) *Containers.* A prescription drug shall be dispensed in a suitable container designed to protect its integrity in accordance with all applicable federal and state laws.

16.3(2) *Labeling.* A label shall be affixed to the container in which a prescription drug is dispensed bearing the following information:

1. Name and address of the dentist.
2. Name of the patient.
3. Date dispensed.

4. Directions for use.
 5. Name, quantity, and strength of medication.
 6. If it is Schedule II, III, or IV controlled substance, the federal transfer warning statement must appear on the label as follows: “Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed.”
 7. Cautionary statements, if any.
- [ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—16.4(153) Prescription requirements.

16.4(1) Prior to January 1, 2020, a prescription drug order may be written or transmitted to a pharmacy orally, by fax, or through electronic prescribing in accordance with applicable federal and state laws. A dentist shall take adequate measures to prevent prescription forgery from occurring. Beginning January 1, 2020, all prescription drug orders, including prescriptions for controlled substances, must be electronically prescribed unless exempted. Beginning January 1, 2020, a dentist who fails to comply with the electronic prescription mandate may be subject to a nondisciplinary administrative penalty of \$250 per violation, up to a maximum of \$5,000 per calendar year.

16.4(2) A dentist may delegate to a licensed dental hygienist or registered dental assistant the preparation of a prescription for the review, authorization, and manual or electronic signature of the dentist, but the dentist is responsible for the accuracy, completeness, and validity of the prescription.

16.4(3) A dentist shall securely maintain the unique authentication credentials issued to the dentist for utilization of the electronic prescription application and authentication of the dentist’s electronic signature. Unique authentication credentials issued to any individual shall not be shared with or disclosed to any other individual.

[ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—16.5(153) Required use of the PMP.

16.5(1) Before a dentist issues an opioid prescription or dispenses an opioid, a dentist or authorized delegate shall query the PMP. The query shall be performed within 48 hours prior to a prescription being issued or dispensed and shall be done for each patient, each time an opioid prescription is authorized or dispensed.

16.5(2) A dentist who dispenses a controlled substance is required to report the dispensing to the PMP within one business day in accordance with 657—Chapter 37.

[ARC 4409C, IAB 4/24/19, effective 5/29/19]

These rules are intended to implement Iowa Code section 153.20.

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[Filed ARC 3987C (Notice ARC 3849C, IAB 6/20/18), IAB 8/29/18, effective 10/3/18]

[Filed ARC 4409C (Notice ARC 4305C, IAB 2/13/19), IAB 4/24/19, effective 5/29/19]

CHAPTER 25
CONTINUING EDUCATION
[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—25.1(153) Definitions. For the purpose of this chapter, these definitions shall apply:

“Advisory committee” means a committee on continuing education formed to review and advise the board with respect to applications for approval of sponsors or activities. The committee’s members shall be appointed by the board and consist of at least one member of the board, two licensed dentists with expertise in the area of professional continuing education, two licensed dental hygienists with expertise in the area of professional continuing education, and two registered dental assistants with expertise in the area of professional continuing education. The advisory committee on continuing education may recommend approval or denial of applications or requests submitted to it pending final approval or disapproval of the board at its next meeting.

“Board” means the dental board.

“Continuing dental education” consists of education activities designed to review existing concepts and techniques and to update knowledge on advances in dental and medical sciences. The objective of continuing dental education is to improve the knowledge, skills, and ability of the individual to deliver the highest quality of service to the public and professions.

Continuing dental education should favorably enrich past dental education experiences. Programs should make it possible for practitioners to attune dental practice to new knowledge as it becomes available. All continuing dental education should strengthen the skills of critical inquiry, balanced judgment and professional technique.

“Dental public health” is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice in which the community serves as the patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, with the administration of group dental care programs, and with the prevention and control of dental diseases on a community basis.

“Hour of continuing education” means one unit of credit which shall be granted for each hour of contact instruction and shall be designated as a “clock hour.” This credit shall apply to either academic or clinical instruction.

“Licensee” means any person who has been issued a certificate to practice dentistry or dental hygiene in the state of Iowa.

“Opioid” means a drug that produces an agonist effect on opioid receptors and is indicated or used for the treatment of pain.

“Registrant” means any person registered to practice as a dental assistant in the state of Iowa.

“Self-study activities” means the study of something by oneself, without direct supervision or attendance in a class. “Self-study activities” may include Internet-based coursework, television viewing, video programs, correspondence work or research, or computer programs that are interactive and require branching, navigation, participation and decision making on the part of the viewer. Internet-based webinars which include the involvement of an instructor and participants in real time and which allow for communication with the instructor through messaging, telephone or other means shall not be construed to be self-study activities.

“Sponsor” means a person, educational institution, or organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time a person, educational institution, or organization is an approved sponsor, all continuing education activities of such person or organization may be deemed automatically approved provided the continuing education activities meet the continuing education guidelines of the board.

[ARC 3489C, IAB 12/6/17, effective 1/10/18; ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—25.2(153) Continuing education administrative requirements.

25.2(1) Each person licensed to practice dentistry or dental hygiene in this state shall complete during the biennium renewal period a minimum of 30 hours of continuing education approved by the board.

25.2(2) Each person registered to practice dental assisting in this state shall complete during the biennium renewal period a minimum of 20 hours of continuing education approved by the board.

25.2(3) Each person who holds a qualification in dental radiography in this state shall complete during the biennium renewal period a minimum of two hours of continuing education in the area of dental radiography.

25.2(4) The continuing education compliance period shall be the 24-month period commencing September 1 and ending on August 31 of the renewal cycle.

25.2(5) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity either previously approved by the board or which otherwise meets the requirements herein and is approved by the board pursuant to rule 650—25.5(153).

25.2(6) It is the responsibility of each licensee or registrant to finance the costs of continuing education.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.3(153) Documentation of continuing education hours.

25.3(1) Every licensee or registrant shall maintain a record of all courses attended by keeping the certificates of attendance for four years. The board reserves the right to require any licensee or registrant to submit the certificates of attendance for the continuing education courses attended. If selected for continuing education audit, the licensee or registrant shall file a signed continuing education form and submit certificates or other evidence of attendance.

25.3(2) Licensees and registrants are responsible for obtaining proof of attendance forms when attending courses. Clock hours must be verified by the sponsor with the issuance of proof of attendance forms to the licensee or registrant.

25.3(3) Each licensee or registrant shall report the number of continuing education credit hours completed during the current renewal cycle in compliance with this chapter. Such report shall be filed with the board at the time of application for renewal of a dental or dental hygiene license or renewal of dental assistant registration.

25.3(4) No carryover of credits from one biennial period to the next will be allowed.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.4(153) Required continuing education courses.

25.4(1) The following courses are required for all licensees and registrants:

- a. Mandatory reporter training for child abuse and dependent adult abuse.
- b. Cardiopulmonary resuscitation.
- c. Infection control.
- d. Jurisprudence.

25.4(2) Mandatory reporter training for child abuse and dependent adult abuse.

a. Licensees or registrants who regularly examine, attend, counsel or treat children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph 25.4(2) “f,” pursuant to Iowa Code chapter 232. Completion of training in this course shall result in two hours of continuing education credit.

b. Licensees or registrants who regularly examine, attend, counsel or treat adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or conditions for exemptions as identified in paragraph 25.4(2) “f,” pursuant to Iowa Code chapter 235B.

c. Licensees or registrants who regularly examine, attend, counsel or treat both children and adults in Iowa shall indicate on the renewal application completion of at least two hours of training on the identification and reporting of abuse in children and dependent adults in the previous five years or conditions for exemptions as identified in paragraph 25.4(2) “f,” pursuant to Iowa Code chapters 232 and 235B. Training may be completed through separate courses or in one combined course that includes curricula for identifying and reporting child abuse and dependent adult abuse. Completion of training in this combined course shall result in three hours of continuing education credit.

d. The licensee or registrant shall maintain written documentation for five years after completion of the mandatory training, including program date(s), content, duration, and proof of participation. The board may audit this information at any time within the five-year period.

e. Training programs in child and dependent adult abuse identification and reporting that are approved by the board are those that use a curriculum approved by the abuse education review panel of the department of public health or a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

f. Exemptions. Licensees and registrants shall be exempt from the requirement for mandatory training for identifying and reporting child and dependent adult abuse if the board determines that it is in the public interest or that at the time of the renewal the licensee or registrant is issued an extension or exemption pursuant to rule 650—25.10(153).

25.4(3) Cardiopulmonary resuscitation (CPR). Licensees and registrants shall furnish evidence of valid certification for CPR, which shall be credited toward the continuing education requirement for renewal of the license, faculty permit or registration. Such evidence shall be filed at the time of renewal of the license, faculty permit or registration. Valid certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the licensee or registrant has been properly certified for each year covered by the renewal period. In addition, the course must include a clinical component. Credit hours awarded for certification in CPR shall not exceed three hours of required continuing education hours per biennium. Credit hours awarded for certification in pediatric advanced life support (PALS) or advanced cardiac life support (ACLS) may be claimed hour for hour.

25.4(4) Infection control. Beginning September 1, 2018, licensees and registrants shall complete continuing education in the area of infection control. Licensees and registrants shall furnish evidence of continuing education completed within the previous biennium in the area of infection control standards, as required by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services. Completion of continuing education in the area of infection control shall be credited toward the required continuing education requirement in the renewal period during which it was completed. A minimum of one hour shall be submitted.

25.4(5) Jurisprudence. Beginning September 1, 2018, licensees and registrants shall complete continuing education in the area of Iowa jurisprudence related to the practice of dentistry, dental hygiene and dental assisting. Licensees and registrants shall furnish evidence of continuing education completed within the previous biennium in the area of Iowa jurisprudence. Completion of continuing education in the area of Iowa jurisprudence shall be credited toward the required continuing education requirement in the renewal period during which it was completed. A minimum of one hour shall be submitted.

25.4(6) The following is required for dentists only.

a. As a condition of license renewal, a licensed dentist who has prescribed opioids to a patient during the biennium renewal period shall obtain a minimum of one hour of continuing education credit on opioids. This training shall include guidelines for prescribing opioids, including recommendations on limitations of dosages and the length of prescriptions, risk factors for abuse, and nonopioid and nonpharmacological therapy options. This hour may count toward the 30 hours of continuing education required for license renewal. The licensee shall maintain documentation of this hour, which may be subject to audit. If the continuing education did not cover the U.S. Centers for Disease Control and Prevention guideline for prescribing opioids for chronic pain, the licensee shall read the guideline prior to license renewal.

b. A licensed dentist who did not prescribe opioids during the biennium renewal period may attest that the dentist is not subject to this requirement due to the fact that the dentist did not prescribe opioids during the time period.

[ARC 3489C, IAB 12/6/17, effective 1/10/18; ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—25.5(153) Acceptable programs and activities.

25.5(1) A continuing education activity shall be acceptable and not require board approval if it meets the following criteria:

a. It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee or registrant and is of value to dentistry and applicable to oral health care; and

b. It pertains to common subjects or other subject matters which relate to the practice of dentistry, dental hygiene, or dental assisting which are intended to refresh and review, or update knowledge of new or existing concepts and techniques, and enhance the dental health of the public; and

c. It is conducted by individuals who have sufficient special education, training and experience to be considered experts concerning the subject matter of the program. The program must include a written outline or manual that substantively pertains to the subject matter of the program.

25.5(2) Types of activities acceptable for continuing dental education credit may include:

a. A dental science course that includes topics which address the clinical practice of dentistry, dental hygiene, dental assisting and dental public health.

b. Courses in record keeping, medical conditions which may have an effect on oral health, ergonomics related to clinical practice, HIPAA, risk management, sexual boundaries, communication with patients, OSHA regulations, and the discontinuation of practice related to the transition of patient care and patient records.

c. Sessions attended at a multiday convention-type meeting. A multiday convention-type meeting is held at a national, state, or regional level and involves a variety of concurrent educational experiences directly related to the practice of dentistry.

d. Postgraduate study relating to health sciences.

e. Successful completion of a recognized specialty examination or the Dental Assisting National Board (DANB) examination.

f. Self-study activities.

g. Original presentation of continuing dental education courses.

h. Publication of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting.

25.5(3) Credit may be given for other continuing education activities upon request and approval by the board.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.6(153) Unacceptable programs and activities.

25.6(1) Unacceptable subject matter and activity types include, but are not limited to, personal development, business aspects of practice, business strategy, financial management, marketing, sales, practice growth, personnel management, insurance, collective bargaining, and events where volunteer services are provided. While desirable, those subjects and activities are not applicable to dental skills, knowledge, and competence. Therefore, such courses will receive no credit toward renewal. The board may deny credit for any course.

25.6(2) Inquiries relating to acceptability of continuing dental education activities, approval of sponsors, or exemptions should be directed to Advisory Committee on Continuing Dental Education, Iowa Dental Board, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.7(153) Prior approval of activities. A person or organization, other than an approved sponsor, that desires prior approval for a course, program or other continuing education activity or that desires to establish approval of the activity prior to attendance may apply for approval to the board, using board-approved forms, at least 90 days in advance of the commencement of the activity. Within 90 days after receipt of such application, the board shall advise the licensee or registrant in writing whether the activity is approved and the number of hours allowed. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. An application fee as specified in 650—Chapter 15 is required. Continuing education course approval shall be valid for a period of five years following the date of board approval. Thereafter, courses may be resubmitted for

approval. Courses which clearly meet the criteria listed under acceptable programs and activities are not required to be submitted for approval.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.8(153) Postapproval of activities. A licensee or registrant seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved and which does not clearly meet the acceptable programs and activities listed in rule 650—25.5(153) may apply for approval to the board using board-approved forms. Within 90 days after receipt of such application, the board shall advise the licensee or registrant in writing whether the activity is approved and the number of hours allowed. All requests may be reviewed by the advisory committee on continuing education prior to final approval or denial by the board. An application fee as specified in 650—Chapter 15 is required.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.9(153) Designation of continuing education hours. Continuing education hours shall be determined by the length of a continuing education course in clock hours. For the purpose of calculating continuing education hours for renewal of a license or registration, the following rules shall apply:

25.9(1) Attendance at a multiday convention.

a. Attendees at a multiday convention may receive a maximum of 1.5 hours of credit per day with the maximum of six hours of credit allowed per biennium.

b. Sponsors of multiday conventions shall submit to the board for review and prior approval guidelines for awarding credit for convention attendance.

25.9(2) Presenters or attendees of table clinics at a meeting.

a. Four hours of credit shall be allowed for presentation of an original table clinic at a meeting as verified by the sponsor when the subject matter conforms with rule 650—25.5(153).

b. Attendees at the table clinic session of a dental, dental hygiene, or dental assisting meeting shall receive two hours of credit as verified by the sponsor when the subject matter conforms with rule 650—25.5(153).

25.9(3) Postgraduate study relating to health sciences shall receive 15 credits per semester.

25.9(4) Successful completion of a specialty examination or the Dental Assisting National Board (DANB) shall result in 15 hours of credit.

25.9(5) Self-study activities shall result in a maximum of 12 hours of continuing education credit per biennium.

25.9(6) An original presentation of continuing dental education shall result in credit double that which the participants receive. Additional credit will not be granted for the repeating of presentations within the biennium. Credit is not given for teaching that represents part of the licensee's or registrant's normal academic duties as a full-time or part-time faculty member or consultant.

25.9(7) Publication of scientific articles in professional journals related to dentistry, dental hygiene, or dental assisting shall result in 5 hours of credit per article with the maximum of 20 hours allowed per biennium.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.10(153) Extensions and exemptions.

25.10(1) *Illness or disability.* The board may, in individual cases involving physical disability or illness, grant an exemption of the continuing education requirements or an extension of time within which to fulfill the same or make the required reports. No exemption or extension of time shall be granted unless written application is made on forms provided by the board and signed by the licensee or registrant and a licensed health care professional. Extensions or exemptions of the continuing education requirements may be granted by the board for any period of time not to exceed one calendar year. In the event that the physical disability or illness upon which an exemption has been granted continues beyond the period granted, the licensee or registrant must apply for an extension of the exemption. The board may, as a condition of the exemption, require the applicant to make up a certain portion or all of the continuing education requirements.

25.10(2) Other extensions or exemptions. Extensions or exemptions of continuing education requirements will be considered by the board on an individual basis. Licensees or registrants will be exempt from the continuing education requirements for:

- a. Periods that the person serves honorably on active duty in the military services;
 - b. Periods that the person practices the person's profession in another state or district having a continuing education requirement and the licensee or registrant meets all requirements of that state or district for practice therein;
 - c. Periods that the person is a government employee working in the person's licensed or registered specialty and assigned to duty outside the United States;
 - d. Other periods of active practice and absence from the state approved by the board;
 - e. The current biennium renewal period, or portion thereof, following original issuance of the license;
 - f. For dental assistants registered pursuant to rule 650—20.7(153), the current biennium renewal period, or portion thereof, following original issuance of the registration.
- [ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.11(153) Exemptions for inactive practitioners. No continuing education hours are required to renew a license or registration on inactive status until application for reactivation is made. A licensee or registrant with a license or registration on inactive status is prohibited from practicing unless and until the license or registration is restored to active status.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.12(153) Approval of sponsors.

25.12(1) An organization or person which desires approval as a sponsor of courses, programs, or other continuing education activities shall apply for approval to the board stating its education history, including approximate dates, subjects offered, total hours of instruction presented, and names and qualifications of instructors. All applications shall be reviewed by the advisory committee on continuing education prior to final approval or denial by the board.

25.12(2) Prospective sponsors must apply to the board using approved forms in order to obtain approved sponsor status. An application fee as specified in 650—Chapter 15 is required. Sponsors must pay the biennial renewal fee as specified in 650—Chapter 15 and file a sponsor recertification record report biennially.

25.12(3) The person or organization sponsoring continuing education activities shall make a written record of the Iowa licensees or registrants in attendance, maintain the written record for a minimum of five years, and submit the record upon the request of the board. The sponsor of the continuing education activity shall also provide proof of attendance and the number of credit hours awarded to the licensee or registrant who participates in the continuing education activity.

25.12(4) Sponsors must be formally organized and adhere to board rules for planning and providing continuing dental education activities. Programs sponsored by individuals or institutions for commercial or proprietary purposes, especially programs in which the speaker advertises or urges the use of any particular dental product or appliance, may be recognized for credit on a prior-approval basis only. When courses are promoted as approved continuing education courses which do not meet the requirements as defined by the board, the sponsor will be required to refund the registration fee to the participants. Approved sponsors may offer noncredit courses provided the participants have been informed that no credit will be given. Failure to meet this requirement may result in loss of approved sponsor status.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.13(153) Review of programs or sponsors. The board on its own motion or at the recommendation of the advisory committee on continuing education may monitor or review any continuing education program or sponsors already approved by the board. Upon evidence of a failure to meet the requirements of rule 650—25.12(153), the board may revoke the approval status of the sponsor. Upon evidence of significant variation in the program presented from the program approved, the board may deny all or any part of the approved hours granted to the program. A provider that

wishes to appeal the board's decision regarding revocation of approval status or denial of continuing education credit shall file an appeal within 30 days of the board's decision. A timely appeal shall initiate a contested case proceeding. The contested case shall be conducted pursuant to Iowa Code chapter 17A and 650—Chapter 51. The written decision issued at the conclusion of a contested case hearing shall be considered final agency action.
[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.14(153) Noncompliance with continuing dental education requirements. It is the licensee's or registrant's personal responsibility to comply with these rules. The license or registration of individuals not complying with the continuing dental education rules may be subject to disciplinary action by the board or nonrenewal of the license or registration.
[ARC 3489C, IAB 12/6/17, effective 1/10/18]

650—25.15(153) Dental hygiene continuing education. The dental hygiene committee, in its discretion, shall make recommendations to the board for approval or denial of requests pertaining to dental hygiene education. The dental hygiene committee may utilize the continuing education advisory committee as needed. The board's review of the dental hygiene committee recommendation is subject to 650—Chapter 1. The following items pertaining to dental hygiene shall be forwarded to the dental hygiene committee for review.

1. Dental hygiene continuing education requirements and requests for approval of programs, activities and sponsors.
2. Requests by dental hygienists for waivers, extensions and exemptions of the continuing education requirements.
3. Requests for exemptions from inactive dental hygiene practitioners.
4. Requests for reinstatement from inactive dental hygiene practitioners.
5. Appeals of denial of dental hygiene continuing education and conduct of hearings as necessary.

[ARC 3489C, IAB 12/6/17, effective 1/10/18]

These rules are intended to implement Iowa Code sections 147.10, 153.15A, and 153.39 and chapter 272C.

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TITLE VI
PROFESSIONAL REGULATIONCHAPTER 30
DISCIPLINE

[Prior to 5/18/88, Dental Examiners, Board of[320]]

650—30.1(153) General. The board has authority to impose discipline for any violation of Iowa Code title IV, chapter 272C, or the rules promulgated thereunder.

650—30.2(153) Methods of discipline. The board has authority to impose one or more of the following disciplinary sanctions:

1. Revocation of license or registration.
2. Suspension of license or registration until further order of the board or for a specified period.
3. Nonrenewal of license or registration.
4. Prohibit permanently, until further order of the board or for a specified period, the engaging in specified procedures, methods or acts.
5. Probation.
6. Require additional education or training.
7. Require clinical or written examination.
8. Order a physical, mental, or clinical evaluation.
9. Impose civil penalties not to exceed \$10,000 where specifically provided by rules.
10. Issue citation and warning.
11. Such other sanctions allowed by law as may be appropriate.

650—30.3(153) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative seriousness of the violation as it relates to assuring the citizens of this state a high standard of professional care.
2. The facts of the particular violation.
3. Any extenuating circumstances or other countervailing considerations.
4. Number of prior violations or complaints.
5. Seriousness of prior violations or complaints.
6. Whether remedial action has been taken.
7. Such other factors as may reflect upon the competency, ethical standards and professional conduct of the licensee or registrant.

650—30.4(147,153,272C) Grounds for discipline. The following shall constitute grounds for the imposition by the board of one or more of the disciplinary sanctions set forth in rule 650—30.2(153), specifically including the imposition of civil penalties not to exceed \$10,000. This rule is not subject to waiver pursuant to 650—Chapter 7 or any other provision of law.

30.4(1) The board may impose discipline for the following violations related to licensure and registration:

- a.* Fraud or deceit in procuring or renewing any license, permit, or registration, including any false or misleading statement of a material fact or omission of information required to be disclosed;
- b.* Engaging in the practice of dentistry, dental hygiene, or dental assisting with a lapsed or inactive license, permit, or registration, or engaging in dental radiography with a lapsed or inactive dental radiography qualification;
- c.* Engaging in the practice of dentistry, dental hygiene, or dental assisting without a license, permit, or registration, or engaging in dental radiography without a dental radiography qualification;
- d.* Employing or permitting an unlicensed or unregistered person or a person with a lapsed or inactive license, permit, or registration to practice dentistry, dental hygiene, or dental assisting;
- e.* Encouraging, assisting, or enabling in any manner the unauthorized practice of dentistry, dental hygiene, or dental assisting; or

f. Failure to prominently display the names of all persons who are practicing dentistry, dental hygiene, or dental assisting within an office.

30.4(2) The board may impose discipline for the following violations related to ethics:

- a.* Fraud in representation as to skill or ability, whether by words or conduct or concealment of that which should have been disclosed, including but not limited to violations of 650—Chapter 26;
- b.* Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of the licensee's or registrant's profession;
- c.* Practicing dentistry, dental hygiene, or dental assisting in a manner that is harmful or detrimental to the public. Proof of actual injury need not be established;
- d.* Conviction of a felony or misdemeanor crime if the conviction relates to the practice of the profession, which includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered;
- e.* Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to, a patient or a coworker;
- f.* Actions which are abusive, coercive, intimidating, harassing, untruthful, or threatening in the practice of dentistry;
- g.* Obtaining any fee by fraud or misrepresentation;
- h.* Giving or receiving cash or cash equivalents, or giving or receiving any gifts exceeding nominal value, for referral of patients;
- i.* Failure to transfer patient records to another licensee upon request; or
- j.* Unprofessional or unethical conduct including, but not limited to, those acts defined by Iowa Code section 153.32 or any violation of 650—Chapter 27.

30.4(3) The board may impose discipline for the following violations related to the ability to practice:

- a.* Habitual use of drugs or intoxicants rendering the licensee or registrant unfit for practice; or
- b.* Practicing dentistry, dental hygiene, or dental assisting while in a state of advanced physical or mental disability where such disability renders the licensee or registrant incapable of performing professional services or impairs functions of judgment necessary to the practice.

30.4(4) The board may impose discipline for the following violations related to patient care:

- a.* Willful and gross malpractice;
- b.* Willful and gross neglect;
- c.* Failure to maintain a satisfactory standard of competency;
- d.* Failure to preserve the confidentiality of patient information or accessing any confidential patient information without authorization;
- e.* Practicing beyond training; or
- f.* Delegating any acts to any licensee or registrant that are beyond the training or education of the licensee or registrant, or that are otherwise prohibited by rule.

30.4(5) The board may impose discipline for the following violations related to prescribing:

- a.* Violating the rules governing prescribing, including any violation of 650—Chapter 16;
- b.* Improperly delegating access to the Iowa prescription monitoring program (PMP) to an unauthorized individual;
- c.* Indiscriminately or promiscuously prescribing, administering, or dispensing any drug;
- d.* Failure to check the PMP prior to prescribing an opioid; or
- e.* Prescribing opioids in dosage amounts exceeding what would be prescribed by a reasonably prudent prescribing practitioner engaged in a similar practice.

30.4(6) The board may impose discipline for the following violations related to infection control:

- a.* Failure to maintain adequate safety and sanitary conditions for a dental office; or
- b.* Failure to comply with standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns related to infection control, as "required" or "recommended" for dentistry by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services and the Iowa occupational safety and health administration.

30.4(7) The board may impose discipline for the following violations related to reporting, compliance, and other state laws:

- a. Failure to notify the board of change of address within 60 days;
- b. Failure to report disciplinary action taken by a licensing authority of another state, territory or country, or another licensing authority in this state, within 30 days of the final action by the licensing authority. A stay by an appellate court shall not negate this requirement; however, if the disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board when the board is so notified;
- c. Having a license or registration revoked, suspended, or otherwise disciplined by a licensing authority in any state, territory, or country;
- d. Failure to report any adverse judgment in a professional malpractice action to which the licensee or registrant was a party or any settlement of a claim against the licensee or registrant alleging malpractice;
- e. Failure to comply with an order of the board;
- f. Violating any provision of Iowa law or rule of the board, or being a party to or assisting in any violation of any provision of Iowa law or rule of the board;
- g. Failure to report any restriction of practice imposed by a hospital, clinic, or other practicing setting;
- h. Failure to report any misdemeanor or felony conviction within 60 days, excluding traffic offenses;
- i. Failure to comply with an Iowa practitioner review committee (IPRC) initial agreement or contract;
- j. Failure to report to the board any acts or omissions made by other licensees or registrants of the board that may constitute a basis for disciplinary action under the rules of statutory provisions governing the practice of dentistry, dental hygiene, or dental assisting in Iowa; or
- k. Failure to report adverse occurrences related to sedation, nitrous oxide inhalation analgesia, and antianxiety premedication pursuant to 650—Chapter 29.

30.4(8) The board may impose discipline for the following violations related to board investigations:

- a. Knowingly providing false information to the board or an agent of the board during the course of an inspection or investigation or interfering with an inspection or investigation;
- b. Failure to comply with a subpoena issued by the board;
- c. Failure to fully and promptly comply with office inspections conducted at the request of the board to determine compliance with sanitation and infection control standards or sedation permit requirements;
- d. Failure to cooperate with a board investigation; or
- e. Retaliating against, threatening, or coercing any person for filing a complaint with the board or cooperating with a board inspection or investigation.

30.4(9) The board may impose discipline for the following violations related to continuing education:

- a. Failure to respond to the board during a continuing education audit, or failure to submit verification of continuing education requirements within the time period provided;
- b. Knowingly submitting a false report of continuing education; or
- c. Failure to meet the required continuing education hours per biennium.

[ARC 4409C, IAB 4/24/19, effective 5/29/19]

650—30.5(153) Impaired practitioner review committee. Transferred IAB 2/6/02, effective 3/13/02. See 650—Chapter 35.

These rules are intended to implement Iowa Code sections 261.121 to 261.127 and Iowa Code chapters 147, 153, 252J, 272C, and 598.

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¹ Effective date of **ARC 3520B**, Items 17 and 20, delayed 70 days by the Administrative Rules Review Committee at its meeting held August 11, 2004.

†See HJR 2006 of 2006 Session of the Eighty-first General Assembly.

CHAPTER 20
LICENSURE OF GENETIC COUNSELORS

653—20.1(148H) Purpose. The licensure of genetic counselors is established to ensure that practitioners are qualified to provide to Iowans genetic counseling with reasonable skill and safety. The provisions of Iowa Code chapters 147, 148H, and 272C authorize the board of medicine to establish eligibility requirements for licensure, evaluate the credentials of applicants for licensure, issue licenses to qualified applicants, institute continuing education requirements, investigate complaints and reports alleging that licensed genetic counselors have violated statutes and rules governing the practice of genetic counseling, make available participation in the Iowa physician health program, and discipline licensed genetic counselors found guilty of infractions as provided in state law and board rules. [ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.2(148H) Scope of chapter. This chapter shall not be construed to apply to any of the following:

1. A physician or surgeon or an osteopathic physician or surgeon licensed under Iowa Code chapter 148, a registered nurse or an advanced registered nurse practitioner licensed under Iowa Code chapter 152, a physician assistant licensed under Iowa Code chapter 148C, or other persons licensed under Iowa Code chapter 147 when acting within the scope of the person's profession and doing work of a nature consistent with the person's education and training.
2. A person who is certified by the American Board of Medical Genetics and Genomics as a doctor of philosophy and is not a genetic counselor licensed pursuant to Iowa Code chapter 148H.
3. A person employed as a genetic counselor by the federal government or an agency thereof if the person provides genetic counseling services solely under the direction and control of the entity by which the person is employed.
4. A genetic counseling intern.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.3(148H) Definitions.

"Active candidate status" means a person has met the requirements established by the American Board of Genetic Counseling to take the American Board of Genetic Counseling certification examination in general genetics and genetic counseling and has been granted this designation by the American Board of Genetic Counseling.

"American Board of Genetic Counseling" or *"ABGC"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

"American Board of Medical Genetics and Genomics" or *"ABMGG"* means the United States-based commission, or its equivalent or successor organization, that validates entry-level competency in the practice of genetic counseling through professional certification.

"Board" means the board of medicine.

"Committee" means the licensure committee of the board.

"Genetic counseling" means the provision of services by a person who qualifies for a license under Iowa Code chapter 148H.

"Genetic counseling intern" means a student enrolled in a genetic counseling program accredited by the accreditation council for genetic counseling or the American Board of Medical Genetics and Genomics.

"Genetic counselor" means a person who is licensed under Iowa Code chapter 148H to engage in the practice of genetic counseling.

"Qualified supervisor" means any person who is a genetic counselor licensed under Iowa Code chapter 148H, a physician licensed under Iowa Code chapter 148, or an advanced registered nurse practitioner licensed under Iowa Code chapter 152.

"Supervision" means supervision by a qualified supervisor who has the overall responsibility of assessing the work of a provisional licensee, provided that an annual supervision contract signed by the

qualified supervisor and the provisional licensee is on file with both parties. “Supervision” does not require the qualified supervisor’s presence during the performance of services.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.4(148H) Scope of practice. A person licensed pursuant to Iowa Code chapter 148H may do any of the following:

1. Obtain and evaluate individual, family, and medical histories to determine genetic risk for genetic and medical conditions and diseases in a patient, the patient’s offspring, and other family members.
2. Discuss the features, history, means of diagnosis, genetic and environmental factors, and management of risk for genetic and medical conditions and diseases.
3. Identify, order, and coordinate genetic laboratory tests and other diagnostic studies as appropriate for the genetic assessment of a patient.
4. Refer a patient to a specialty or subspecialty department as necessary for the purpose of collaborating on diagnosis and treatment involving multiple body systems and general medical management.
5. Integrate genetic laboratory test results and other diagnostic studies with personal and family medical history to assess and communicate risk factors for genetic and medical conditions and diseases.
6. Explain the clinical implications of genetic laboratory tests and other diagnostic studies and their results.
7. Evaluate the responses of a patient or patient’s family to the condition or risk of recurrence and provide patient-centered genetic counseling and anticipatory guidance.
8. Identify and utilize community resources that provide medical, educational, financial, and psychosocial support and advocacy.
9. Provide written documentation of medical, genetic, and counseling information for families and health care professionals.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.5(148H) Titles used. A genetic counselor licensed under Iowa Code chapter 148H may use the words “genetic counselor” or “licensed genetic counselor” or the corresponding abbreviation “LGC” after the person’s name. Persons who possess a provisional license shall add the designation “provisional licensed genetic counselor.”

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.6(148H) Qualifications for licensure.

20.6(1) Each applicant for licensure under Iowa Code chapter 148H shall:

- a. Submit an application form and supporting documentation as prescribed by the board.
- b. Hold active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.

20.6(2) A licensee shall maintain active certification as a genetic counselor by the American Board of Genetic Counseling, as a genetic counselor by the American Board of Medical Genetics and Genomics, or as a medical geneticist by the American Board of Medical Genetics and Genomics, or the successor to any of the aforementioned organizations.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.7(148H) Qualifications for provisional licensure. The board may issue a provisional license to an applicant who meets all of the requirements for licensure except for the certification component and who has been granted active candidate status by the American Board of Genetic Counseling or the American Board of Medical Genetics and Genomics.

20.7(1) The applicant shall submit a provisional license application form, proof of active candidate status, and supporting documentation prescribed by the board.

20.7(2) A provisional license shall expire and become inactive upon the earliest of the following:

- a. Issuance of a license as a genetic counselor by the board.
- b. Loss of active candidate status.

(1) A person holding a provisional license which is inactive due to loss of active candidate status may submit an application for reactivation of the provisional license upon demonstrating that active candidate status has been reestablished.

- (2) An application for extension of a provisional license shall be signed by a qualified supervisor.
- c. The date printed on the provisional license.

20.7(3) A person with a provisional license shall work at all times under the supervision of a qualified supervisor.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.8(147,148H) Application requirements.

20.8(1) *Application for licensure.* To apply for a license to practice genetic counseling, an applicant shall:

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

- b. Pay the nonrefundable initial application fee identified in 653—paragraph 8.14(2) “a” and pay the fee identified in 653—paragraph 8.14(2) “f” for the evaluation of the fingerprint packet and the national criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

20.8(2) *Contents of the application form.* Each applicant shall submit the following information on the application form provided by the board:

- a. The applicant’s full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board;

- b. A photograph of the applicant suitable for positive identification;

- c. A chronology accounting for all time periods from the date the applicant entered a genetic counseling training program or educational institution to the date of the application;

- d. The other jurisdictions in the United States or other nations or territories in which the applicant is authorized to practice genetic counseling, including license, certificate of registration or certification number and date of issuance;

- e. Full disclosure of the applicant’s involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process;

- f. A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction;

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

- h. A letter sent directly from the ABGC or ABMGG to the board verifying the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or proof of active candidate status for provisional licensure;

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

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

20.8(3) *Application cycle.* If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

a. To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee identified in 653—paragraph 8.14(2)“*b*” and shall update application materials if requested by the board. The period for requesting reactivation is limited to 30 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

b. Once the application reactivation period is expired, an applicant must reapply and submit a new, nonrefundable initial application fee and a new application, including required documents and credentials.

20.8(4) *Applicant responsibilities.* An applicant for licensure to practice genetic counseling bears full responsibility for each of the following:

a. Paying all fees charged by regulatory authorities, national testing or credentialing organizations, health facilities, and educational institutions providing the information specified in subrule 20.8(2);

b. Providing accurate, up-to-date, and truthful information on the application form including, but not limited to, that specified under subrule 20.8(2) related to prior professional experience, education, training, active certification, licensure or registration, and disciplinary history.

20.8(5) *Licensure application review process.* A process established by the board shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

a. An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial application fee.

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

c. If the final review indicates that the application is complete and that the application does not raise any questions or concerns regarding the applicant's qualifications for licensure, staff may administratively issue the license. Staff may issue the license without having received a report on the applicant from the FBI.

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

(1) If there is no current concern, staff shall administratively issue the license.

(2) If there are questions or concerns, an Iowa-licensed genetic counselor may be consulted.

(3) If any concern exists, staff shall refer the application to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to issue the license administratively.

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

(1) Request an investigation;

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

(3) If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, require an applicant to:

1. Successfully complete board-approved continuing education or remediation;

2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;
3. Successfully complete any other pathway as agreed upon by the board;
- (4) Issue a license;
- (5) Issue a license under certain terms and conditions or with certain restrictions;
- (6) Request that the applicant withdraw the licensure application; or
- (7) Deny a license.
- h.* The board shall consider applications and recommendations from the committee and shall:
 - (1) Request an investigation;
 - (2) Request that the applicant appear for an interview;
 - (3) If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, require an applicant to:
 1. Successfully complete board-approved continuing education or remediation;
 2. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor's employer, an Iowa-licensed genetic counselor and the board;
 3. Successfully complete any other pathway as agreed upon by the board;
 - (4) Issue a license;
 - (5) Issue a license under certain terms and conditions or with certain restrictions;
 - (6) Request that the applicant withdraw the licensure application; or
 - (7) Deny a license. The board may deny a license for any grounds on which the board may discipline a license.

20.8(6) *Grounds for denial of licensure.* The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

- a.* Failure to meet the requirements for licensure specified in this chapter pursuant to Iowa Code section 148H.3.
- b.* Pursuant to Iowa Code section 147.4, upon any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55 and 148H.7 or in rule 653—20.20(147,148H,272C).

20.8(7) *Preliminary notice of denial.* Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

20.8(8) *Appeal procedure.* An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing and may provide additional written information or documents in support of licensure.

20.8(9) *Hearing.* If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with rule 653—25.30(17A).

- a.* License denial hearings are contested cases open to the public.
- b.* Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.
- c.* Evidence supporting the denial of the license may be presented by an assistant attorney general.
- d.* While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

e. The board, after a hearing on license denial, may issue or deny the license. The board shall state the reasons for its decision and may issue the license, issue the license with restrictions, or deny the license. The final decision is a public record.

f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

20.8(10) Finality. If an applicant does not appeal a preliminary notice of denial in accordance with subrule 20.8(8), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

20.8(11) Failure to pursue appeal. If an applicant appeals a preliminary notice of denial in accordance with subrule 20.8(8) but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

20.8(12) Waiver or variance prohibited. Provisions of this rule are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.9(147,148H) Display of license and notification required to change the board's data system.

20.9(1) Display of license. Licensed genetic counselors shall display the license issued by the board in a conspicuous place in their primary place of business.

20.9(2) Change of contact information. Licensees shall notify the board within one month of a change in home address, address of the place of practice, home or practice telephone number, or personal email address regularly used by the applicant or licensee for correspondence with the board.

20.9(3) Change of full legal name. A licensee shall notify the board of any change in the licensee's full legal name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

20.9(4) Deceased. A licensee's file shall be closed and labeled "deceased" when the board receives a copy of the licensee's death certificate or other reliable information of the licensee's death.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.10(147,148H,272C) Biennial renewal of license required. Pursuant to Iowa Code section 148H.3, a license expires on October 31 of odd-numbered years and can be renewed for the fee identified in 653—paragraph 8.14(2) "c."

20.10(1) The applicant for renewal shall provide:

a. A renewal application provided by the board.
b. A letter sent directly from the ABGC or ABMGG to the board verifying that the applicant holds active certification in genetic counseling by the ABGC or ABMGG for genetic counselor licensure or proof of active candidate status for provisional licensure.

c. Satisfactory evidence to the board that in the period since the license was issued or last renewed, the applicant has completed 30 hours of National Society of Genetic Counselors or ABMGG continuing education units as approved by the board.

20.10(2) Expiration date. Certificates of licensure to practice genetic counseling shall expire on October 31 in odd years.

20.10(3) Prorated fees. The first renewal fee for a license shall be prorated on a monthly basis according to the date of issue.

20.10(4) Renewal requirements and penalties for late renewal. Each licensee shall be sent a renewal notice at least 60 days prior to the expiration date. The licensee is responsible for renewing the license

prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license.

a. When online renewal is used, the licensee must complete the online renewal prior to midnight on December 31 in order to ensure that the license will not become inactive. The license becomes inactive and invalid at 12:01 a.m. on January 1.

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

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

d. If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, a penalty fee identified in 653—paragraph 8.14(2) “*d*” shall be assessed for renewal in the grace period, a period up until January 1 when the license becomes inactive if not renewed.

20.10(5) *Inactive license.* Failure of a licensee to renew by January 1 will result in invalidation of the license, and the license will become inactive.

a. Licensees are prohibited from engaging in the practice of genetic counseling once the license is inactive.

b. Having a genetic counselor license in inactive status does not preclude the board from taking disciplinary actions authorized in Iowa Code section 147.55 or 148H.7.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.11(147,272C) Reinstatement of an inactive license.

20.11(1) *Reinstatement requirements.* Licensees who allow their licenses to go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

a. Submit upon forms provided by the board a completed application for reinstatement of a license to practice genetic counseling. The application shall include the following information:

(1) The applicant’s full legal name, date and place of birth, home address, mailing address, principal business address, and personal email address regularly used by the applicant or licensee for correspondence with the board.

(2) Every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

(3) Full disclosure of the applicant’s involvement in civil litigation related to the practice of genetic counseling in any jurisdiction of the United States or other nations or territories. Copies of the legal documents may be requested if needed during the review process.

(4) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical, genetic counseling or professional regulatory authority; an educational institution; a training or research program; or a health facility in any jurisdiction.

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

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

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

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

b. Submit a completed fingerprint packet to facilitate a national criminal history background check. The fee identified in 653—paragraph 8.14(2) “*f*” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

c. Pay the reinstatement fee identified in 653—paragraph 8.14(2) “g” plus the fee identified in 653—paragraph 8.14(2) “f” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

d. Provide a certificate which demonstrates that the applicant holds active certification in genetic counseling by ABGC or ABMGG.

e. Meet any new requirements instituted since the license lapsed.

20.11(2) Reinstatement for an applicant who has been out of practice for three years. If an applicant has not engaged in the field of genetic counseling in the past three years in any jurisdiction of the United States, the board may require an applicant to:

a. Successfully complete board-approved continuing education or remediation.

b. Successfully complete a board-approved employment-based monitoring program developed by the genetic counselor’s employer, an Iowa-licensed genetic counselor and the board.

c. Successfully complete any other pathway as agreed upon by the board.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.12(272C) Code of ethics. The NSGC Code of Ethics prepared and approved by the National Society of Genetic Counselors shall be utilized by the board as guiding principles in the practice of genetic counseling in this state.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.13(272C) Nonpayment of state debt. 653—Chapter 12 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.14(272C) Standards of practice—office practices. Rule 653—13.7(147,148,272C) shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.15(272C) Iowa physician health committee. 653—Chapter 14 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.16(272C) Child support noncompliance. 653—Chapter 15 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.17(272C) Student loan default or noncompliance. 653—Chapter 16 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.18(272C) Military service and veteran reciprocity. 653—Chapter 18 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.19(272C) Mandatory reporting. 653—Chapter 22 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.20(147,148H,272C) Grounds for discipline of genetic counselors. The board has authority to impose discipline for any violation of Iowa Code chapter 147, 148H, or 272C or the rules promulgated thereunder. These grounds for discipline apply to genetic counselors. This rule is not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law. The board may impose any of the disciplinary sanctions set forth in 653—subrule 25.25(1), when the board determines that the licensee is guilty of any of the following acts or offenses:

20.20(1) Violating any of the grounds for revocation or suspension of a license as listed in Iowa Code section 147.55, 148H.7, or 272C.10.

20.20(2) Professional incompetency. Professional incompetency includes, but is not limited to, any of the following:

- a. Willful or repeated gross malpractice;
- b. Willful or gross negligence;
- c. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the genetic counselor's practice;
- d. A substantial deviation by the genetic counselor from the standards of learning or skill ordinarily possessed and applied by other genetic counselors in the state of Iowa acting in the same or similar circumstances;
- e. A failure by a genetic counselor to exercise in a substantial respect that degree of care which is ordinarily exercised by an average genetic counselor in the state of Iowa acting in the same or similar circumstances;
- f. A willful or repeated departure from or failure to conform to the minimal standard of acceptable and prevailing practice of genetic counseling in the state of Iowa.

20.20(3) Practice harmful or detrimental to the public. Practice harmful or detrimental to the public includes, but is not limited to, the failure of the genetic counselor to possess and exercise that degree of skill, learning, and care expected of a reasonable, prudent genetic counselor acting in the same or similar circumstances in this state, or when a genetic counselor is unable to practice genetic counseling with reasonable skill and safety as a result of mental or physical impairment, or chemical abuse.

20.20(4) Unprofessional conduct. Engaging in unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice, or good morals, whether the act is committed in the scope of the licensee's practice or otherwise, and whether the act is committed in this state or elsewhere; or a violation of the principles of ethics applicable to genetic counselors.

20.20(5) Sexual misconduct. Engaging in sexual misconduct includes, but is not limited to, a genetic counselor engaging in conduct set forth in 653—subrule 13.7(4) (sexual conduct) or 13.7(6) (sexual harassment) as interpreted by the board.

20.20(6) Substance abuse. Substance abuse includes, but is not limited to, excessive use of alcohol, drugs, narcotics, chemicals, or other substances in a manner which may impair a licensee's ability to practice the profession with reasonable skill and safety.

20.20(7) Physical or mental impairment. Physical or mental impairment includes, but is not limited to, any physical, neurological, or mental condition which may impair a genetic counselor's ability to practice the profession with reasonable skill and safety. Being adjudicated mentally incompetent by a court of competent jurisdiction shall automatically suspend a license for the duration of the license unless the board orders otherwise.

20.20(8) Felony criminal conviction. Being convicted of a felony in the courts of this state, another state, the United States, or any country, territory, or jurisdiction, as defined in Iowa Code section 148.6(2) "b."

20.20(9) Violation of the laws or rules governing the practice of genetic counseling in this state, another state, the United States, or any country, territory, or jurisdiction. Violation of the laws or rules governing the practice of genetic counseling includes, but is not limited to, willful or repeated violation of the provisions of these rules or the provisions of Iowa Code chapter 147, 148H, or 272C or any other state or federal laws governing the practice of genetic counseling.

20.20(10) Violation of a lawful order of the board, previously entered by the board in a disciplinary or licensure hearing, or violation of the terms and provisions of a consent agreement or settlement agreement entered into between a licensee and the board.

20.20(11) Violation of an initial agreement or health contract entered into with the Iowa physician health program (IPHP).

20.20(12) Failure to comply with an evaluation order under Iowa Code section 272C.9(1).

20.20(13) Knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of genetic counseling. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of genetic counseling includes, but is not limited to, an intentional

perversion of the truth, either orally or in writing, by a genetic counselor in the practice of genetic counseling.

20.20(14) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice genetic counseling in this state, and includes false representations of material fact, either by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board any false or forged document submitted with an application for license in this state.

20.20(15) Fraud in representations as to skill or ability. Fraud in representations as to skill or ability includes, but is not limited to, a licensee's having made misleading, deceptive, or untrue representations as to the genetic counselor's competency to perform professional services for which the licensee is not qualified to perform by education, training, or experience.

20.20(16) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making known to the public information which is false, deceptive, misleading, or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

- a. Inflated or unjustified claims which lead to expectations of favorable results;
- b. Self-laudatory claims that imply that the licensee is skilled in a field or specialty for which the licensee is not qualified;
- c. Representations that are likely to cause an average person to misunderstand; or
- d. Extravagant claims or claims of extraordinary skill not recognized by the profession of genetic counseling.

20.20(17) Obtaining any fee by fraud or misrepresentation.

20.20(18) Acceptance of remuneration for referral of a patient to other health professions in violation of the law or National Society of Genetic Counselors Code of Ethics.

20.20(19) Knowingly submitting a false report of continuing education or failure to submit the required reports of continuing education.

20.20(20) Knowingly aiding, assisting, procuring, or advising a person in the unlawful practice of genetic counseling.

20.20(21) Failure to report disciplinary action. Failure to report a license revocation, suspension, or other disciplinary action taken against a licensee by a professional licensing authority of another state, an agency of the United States government, or any country, territory, or other jurisdiction, within 30 days of final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

20.20(22) Failure to report voluntary agreements. Failure to report any voluntary agreement to restrict the practice of genetic counseling entered into with this state, another state, the United States, an agency of the federal government, or any country, territory or other jurisdiction.

20.20(23) Failure to notify the board within 30 days after occurrence of any settlement or adverse judgment of a malpractice claim or action.

20.20(24) Failure to comply with a valid subpoena issued by the board pursuant to Iowa Code sections 17A.13 and 272C.6.

20.20(25) Failure to submit to a board-ordered mental, physical, clinical competency, or substance abuse evaluation or a drug or alcohol screening.

20.20(26) Noncompliance with a support order or with a written agreement for payment of support as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 252J. Disciplinary proceedings under this rule shall follow the procedures set forth in Iowa Code chapter 252J and 653—Chapter 15.

20.20(27) Student loan default or noncompliance with an agreement for payment of a student loan obligation as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 261 and rule 653—16.2(261).

20.20(28) Improper management of medical records. Improper management of medical records includes, but is not limited to, failure to maintain timely, accurate, and complete medical records.

20.20(29) Failure to respond to or comply with a board investigation initiated pursuant to Iowa Code section 272C.3 and rule 653—24.2(17A,147,148,272C).

20.20(30) Failure to submit an additional completed fingerprint card and applicable fee, within 30 days of a request made by board staff, when a previous fingerprint submission has been determined to be unacceptable.

20.20(31) Failure to respond to the board or submit continuing education materials during a board audit, within 30 days of a request made by board staff or within the extension of time if one has been granted.

20.20(32) Failure to respond to the board or submit requested mandatory training for identifying and reporting abuse materials during a board audit, within 30 days of a request made by the board staff or within the extension of time if one has been granted.

20.20(33) Nonpayment of state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 653—Chapter 12.

20.20(34) Failure to file with the board a written report and a copy of the hospital disciplinary action within 30 days of any hospital disciplinary action or the licensee's voluntary action to avoid a hospital disciplinary action, as required by rule 653—22.5(272C).

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.21(272C) Complaints and investigations. 653—Chapter 24 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.22(272C) Contested case proceedings. 653—Chapter 25 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.23(272C) Reinstatement after disciplinary action. 653—Chapter 26 shall apply to licensed genetic counselors.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.24(148H,272C) Surrender of license to the board.

20.24(1) A genetic counselor whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the board shall promptly surrender the original license to the board.

20.24(2) A genetic counselor whose ABGC certification has lapsed or whose certification has been revoked by the ABGC shall surrender the genetic counselor's license to the board.

20.24(3) A provisional licensee who loses active candidate status with the ABGC must immediately cease the practice of genetic counseling until the provisional licensee obtains an extension of the provisional license or obtains a new provisional license.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

653—20.25(147,148H,272C) Waiver or variance prohibited. Fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

[ARC 4339C, IAB 3/13/19, effective 4/17/19; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapters 147, 148, 148H, and 272C.

[Filed ARC 4339C (Notice ARC 4095C, IAB 10/24/18), IAB 3/13/19, effective 4/17/19]¹

¹ April 17, 2019, effective date of Chapter 20 [ARC 4339C] delayed 70 days by the Administrative Rules Review Committee at its meeting held April 5, 2019.

NURSING BOARD[655]

[Prior to 8/26/87, see Nursing, Board of[590], renamed Nursing Board[655] under the "umbrella" of Public Health Department by 1986 Iowa Acts, ch 1245]

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CHAPTER 3
LICENSURE TO PRACTICE—REGISTERED NURSE/LICENSED PRACTICAL NURSE

655—3.1(17A,147,152,272C) Definitions.

“*Applicant*” means a person who is qualified to take the examination or apply for licensure by endorsement.

“*Approved nursing program*” means a nursing education program whose status has been recognized by the board or by a similar board in another jurisdiction that prepares individuals for licensure as a licensed practical nurse, registered nurse, or advanced registered nurse practitioner; or grants a baccalaureate, master’s or doctorate degree with a major in nursing.

“*CGFNS*” means the Commission on Graduates of Foreign Nursing Schools.

“*Endorsement*” means the process by which a registered nurse/licensed practical nurse licensed in another jurisdiction becomes licensed in Iowa.

“*Examination*” means the tests used to determine minimum competency prior to the issuance of a registered nurse/licensed practical nurse license.

“*Fees*” means those fees collected which are based upon the cost of sustaining the board’s mission to protect the public health, safety and welfare. The nonrefundable fees set by the board are as follows:

1. Application for original license based on the registered nurse examination, \$93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI)).
2. Application for original license based on the practical nurse examination, \$93 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
3. Application for registered nurse/licensed practical nurse license by endorsement, \$119 (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
4. Application for original license or renewal as an advanced registered nurse practitioner, \$81 for any period of licensure up to three years.
5. For a certified statement that a registered nurse/licensed practical nurse is licensed in this state or registered as an advanced registered nurse practitioner, \$25.
6. For written verification of licensure status, not requiring certified statements, \$3 per license.
7. For reactivation of a license to practice as a registered nurse/licensed practical nurse, \$175 for a license lasting more than 24 months up to 36 months (plus the fee for evaluation of the fingerprint cards and the criminal history background checks by the DCI and the FBI).
8. For reactivation of a license to practice as an advanced registered nurse practitioner, \$81 for any period of licensure up to three years.
9. For the renewal of a license to practice as a registered nurse/licensed practical nurse, \$99 for a three-year period.
10. For a duplicate or reissued wallet card or original certificate to practice as a registered nurse, licensed practical nurse, or advanced registered nurse practitioner, \$20.
11. For late renewal of a registered nurse/licensed practical nurse license, \$50, plus the renewal fee as specified in paragraph “9” of this definition.
12. For a check returned for any reason, \$15. If licensure/registration has been issued by the board office based on a check for the payment of fees and the check is later returned by the bank, the board shall request payment by certified check or money order.
13. For a certified copy of an original document, \$20.
14. For the evaluation of the fingerprint cards and the DCI and FBI criminal history background checks, \$50.

“*IELTS™*” means International English Language Testing System.

“*Inactive license*” means a registered nurse or licensed practical nurse license that has been placed on inactive status because it was not renewed by the fifteenth day of the month following the expiration date, or the board has received notification that a licensee has declared another compact state as primary state of residency.

“*Late license*” means a registered nurse or licensed practical nurse license that has not been renewed by the expiration date. The time between the expiration date and the fifteenth day of the month following the expiration date is considered a grace period.

“*Licensee*” means a person who has been issued a license to practice as a registered nurse, licensed practical nurse or advanced registered nurse practitioner under the laws of this state.

“*NCLEX®*” means National Council Licensure Examination for registered nurse/licensed practical nurse licensure.

“*NCSBN*” means the National Council of State Boards of Nursing, Inc.

“*Nurse licensure compact*” means an agreement between member states that allows mutual recognition of a nursing license. The definitions in the nurse licensure compact rules are incorporated for purposes of this chapter.

“*Overpayment*” means payment in excess of the required fee. Overpayment less than \$10 received by the board shall not be refunded.

“*Reactivation*” means the process whereby an inactive licensee obtains a current license.

“*Reinstatement,*” pursuant to rule 655—20.36(17A,147,272C), means the process by which any person whose license to practice nursing has been suspended, revoked or voluntarily surrendered by order of the board may apply for license consideration.

“*Temporary license*” means a license issued on a short-term basis for a specified time pursuant to subrule 3.5(4).

“*TOEFL®*” means Test of English as a Foreign Language.

[ARC 1130C, IAB 10/30/13, effective 12/4/13; ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 2339C, IAB 1/6/16, effective 2/10/16; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.2(17A,147,152,272C) Mandatory licensure.

3.2(1) A person who practices nursing in the state of Iowa as defined in Iowa Code section 152.1, outside of one’s family, shall have a current Iowa license, whether or not the employer is in Iowa and whether or not the person receives compensation. Any nurse who participates in the care of a patient situated in Iowa, whether that care is provided through telephonic, electronic or in-person means, and regardless of the location of the nurse, must obtain Iowa licensure unless specifically exempted.

3.2(2) Current Iowa licensure is not mandatory when:

a. A nurse who resides in another party state is recognized for licensure in this state pursuant to the nurse licensure compact contained in Iowa Code chapter 152E. The nurse licensure compact rules are available on the board’s website.

b. A nurse who holds an active license in another state provides services to patients in Iowa only during interstate transit.

c. A nurse who holds an active license in another state provides emergency services in an area in which the governor of Iowa has declared a state of emergency.

3.2(3) A nurse who is enrolled in an approved nursing program shall hold an active license in the U.S. jurisdiction(s) in which the nurse provides patient care.

[ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.3(17A,147,152,272C) Licensure qualifications for registered nurse and licensed practical nurse. Applicants shall meet the requirements set forth in Iowa Code sections 147.3 and 152.7. Requirements include:

1. Graduation from an approved nursing program preparing registered nurses as defined in Iowa Code section 152.5(1) for registered nurse applicants or graduation from an approved nursing program preparing practical nurses as defined in Iowa Code section 152.5(1) for licensed practical nurse applicants.

2. Passing NCLEX® or the State Board Test Pool Examination, the national examination used prior to 1982.

3. Board approval of an applicant with a criminal history or a record of prior disciplinary action, regardless of jurisdiction.

[ARC 8222B, IAB 10/7/09, effective 11/11/09; ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.4(17A,147,152,272C) Licensure by examination.

3.4(1) Board application. A graduate of an approved nursing program seeking initial licensure shall submit the following:

- a. A completed application for licensure by examination.
- b. Payment of the application fee.
- c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.
- d. Copies of relevant court documents if the applicant has a criminal history.
- e. Official transcript denoting the date of graduation and diploma or degree conferred sent directly to the board from the nursing program.

3.4(2) Test registration. The applicant shall complete NCLEX® registration, including payment of applicable fees through the national test service agency.

3.4(3) ADA accommodations. An applicant with a disability may submit a request to the board for testing accommodations. The request should include the nature of the disability and the specific testing accommodations being requested. A request must be accompanied by written documentation from the applicant's health care provider describing the disability and the recommended accommodations, and documentation from the applicant's nursing education program if testing accommodations were provided to the applicant during school. Approved accommodation requests will be communicated to the national test service agency.

3.4(4) Authorization to test. An applicant will not receive authorization to test until all of the requirements in subrules 3.4(1) and 3.4(2) are met. An applicant shall self-schedule the examination with an approved testing center and must test within 91 days of receiving authorization to test. An applicant who does not test within 91 days of receiving authorization to test is required to submit a new completed application for licensure by examination and fee to the board. An applicant who does not appear for a testing appointment or does not complete the examination must follow the requirements for reexamination.

3.4(5) Reexamination. An applicant who fails the examination and reapplies within 12 months of submitting a prior application to the board shall be required to complete the requirements in paragraphs 3.4(1) "a" and "b" and subrule 3.4(2). An applicant who fails the examination and reapplies after 12 months of submitting a prior application to the board shall be required to complete all requirements in subrules 3.4(1) and 3.4(2).

3.4(6) Licensure. Upon satisfactory review of the documentation described in subrule 3.4(1) and proof of successful completion of the examination, the applicant will be issued a certificate of license by examination and a current license to practice as a registered nurse or licensed practical nurse.

3.4(7) Failure to complete the licensure process. Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

[ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.5(17A,147,152,272C) Licensure by endorsement.

3.5(1) Board application. A graduate of an approved nursing program seeking licensure in Iowa who has been licensed in another state shall submit the following:

- a. A completed application for licensure by endorsement.
- b. Payment of the application fee.
- c. Two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check.

- d. Copies of relevant court documents if the applicant has a criminal history.
- e. Copies of relevant disciplinary documents if the applicant has had disciplinary action taken by another state.
- f. Verification of the license from the original state of licensure, which may be done through www.nursys.com or using the verification form depending on the requirements of the original state of licensure.
- g. Proof of active licensure in any jurisdiction within the previous five years from the date of application or proof of completion of a nurse refresher course in accordance with rule 655—3.10(152) taken within the 12 months prior to the date of application.
- h. Official transcript denoting the date of graduation and diploma or degree conferred sent directly to the board from the nursing program. An applicant may be excused from this requirement if the nursing program is closed and records are no longer available.

3.5(2) Temporary license. An applicant who has submitted all documentation described in paragraphs 3.5(1) “a” to “g” may request a temporary license for up to 30 days to practice in Iowa pending receipt of official transcripts from the nursing program.

3.5(3) Licensure. Upon satisfactory review of the documentation described in subrule 3.5(1), the applicant will be issued a certificate of license by endorsement and a current license to practice as a registered nurse or licensed practical nurse.

3.5(4) Failure to complete the licensure process. Once an application is initiated, the applicant has 12 months to complete the licensure process. The board reserves the right to destroy any applications and supporting documents after 12 months if the applicant has not completed the licensure process. Applicants who fail to complete the licensure process within 12 months are required to start the application process anew.

[ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.6(17A,147,152,272C) Applicants educated in a foreign country or in a U.S. territory that is not a member of NCSBN.

3.6(1) Applicant for licensure. An applicant seeking licensure in Iowa who was educated in a foreign country or in a U.S. territory that is not a member of NCSBN shall apply for licensure by examination pursuant to rule 655—3.4(17A,147,152,272C) or licensure by endorsement pursuant to rule 655—3.5(17A,147,152,272C), as applicable, but instead of submitting an official transcript, shall submit one of the following documents issued by CGFNS:

- a. Credentials evaluation service professional report.
- b. VisaScreen certificate or certificate verification letter verifying that a VisaScreen certificate was issued.
- c. Certification program CGFNS certificate or certificate verification letter verifying that a certification program CGFNS certificate was issued.

3.6(2) CGFNS documentation. The documentation issued by CGFNS shall verify all of the following:

- a. Completion of education equivalent to approved nursing programs for licensed practical nurse and registered nurse applicants.
- b. The applicant’s licensure or registration as a nurse in the applicant’s country or U.S. territory of origin, current country or U.S. territory of residence, or country or U.S. territory where educated.
- c. The ability to read, write, speak, and understand the English language as determined by passing the TOEFL® or IELTS™ test. A passing score is as follows: 560 for the TOEFL® paper-based test; 220 for the TOEFL® computer-based test; 84 for the TOEFL® Internet-based test; and an overall score of 6.5 and a speaking score of 7.0 for the IELTS™ test. An applicant shall be exempt from taking either the TOEFL® or IELTS™ test when all of the following are met: (1) the nursing education was completed in a college, university, or professional school located in Australia, Barbados, Canada (except Quebec), Ireland, Jamaica, New Zealand, South Africa, Trinidad and Tobago, or the United Kingdom; (2) the language of instruction in the nursing program was English; and (3) the language of the textbooks in the nursing program was English.

3.6(3) Social security number. To be eligible for a multistate license, an applicant must have a social security number. An applicant who does not have a social security number shall submit documentation of lawful presence and will only be eligible for a single state license.
[ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.7(17A,147,152,272C) License cycle.

3.7(1) Name and address changes. Written notification to the board of name and address changes is required within 30 days of the event. Licensure documents are mailed to the licensee at the address on file in the board office. There is no fee for a change of name or address in board records.

3.7(2) New licenses. The board shall issue licenses by endorsement and examination for a 24- to 36-month period. When the license is renewed, it will be placed on a three-year renewal cycle. Expiration shall be on the fifteenth day of the licensee's birth month.

3.7(3) Renewal. The licensee may renew the license beginning 60 days prior to license expiration.

a. The licensee shall:

(1) Attest that Iowa is the primary state of residence or that the primary state of residence is a noncompact state. The board may request evidence of residency.

(2) Submit the renewal application and the renewal fee as specified in rule 655—3.1(17A,147,152,272C).

(3) Meet the continuing education requirement as set forth in 655—Chapter 5, prior to license renewal.

(4) Complete the required mandatory reporter training set forth in paragraph 3.7(3)“*b.*”

b. Mandatory reporter training.

(1) The course shall be a curriculum approved by the Iowa department of public health.

(2) A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for rule suspension as identified in subparagraph 3.7(3)“*b*”(6).

(3) A licensee who regularly examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for rule suspension as identified in subparagraph 3.7(3)“*b*”(6).

(4) A licensee who regularly examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training on abuse identification and reporting in dependent adults and children or condition(s) for rule suspension as identified in subparagraph 3.7(3)“*b*”(6). Training may be completed through separate courses as identified in subparagraphs 3.7(3)“*b*”(2) and (3) or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

(5) The licensee shall maintain written documentation for five years after mandatory training as identified in subparagraphs 3.7(3)“*b*”(2) to (4), including program date(s), content, duration, and proof of participation.

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

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

2. Holds a current exemption based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 655—Chapter 5.

(7) The board may select licensees for audit of compliance with the requirements in subparagraphs 3.7(3)“*b*”(1) to (6).

3.7(4) Late renewal. The license shall become late when the license has not been renewed by the expiration date. The licensee shall be assessed a late fee as specified in rule 655—3.1(17A,147,152,272C).

To renew a late license, the licensee shall complete the renewal requirements and submit the late fee before the fifteenth day of the month following the expiration date.

3.7(5) *Inactive status.* The license shall become inactive when the license has not been renewed by the fifteenth day of the month following the expiration date or the board office has been notified by another compact state that a licensee has declared a new primary state. The former home state license shall no longer be valid upon the issuance of a new home state license.

- a. If the inactive license is not reactivated, it shall remain inactive.
- b. If the licensee resides in Iowa or a noncompact state, the licensee shall not practice nursing in Iowa until the license is reactivated to active status. If the licensee is identified as practicing nursing with an inactive license, disciplinary proceedings may be initiated.
- c. The licensee is not required to obtain continuing education credit or pay fees while the license is inactive.

d. To reactivate the license, the licensee shall complete the reactivation requirements.

(1) The licensee shall be provided an application, a continuing education report form, two fingerprint cards, a waiver form, and statement of the fees. The reactivation fee and criminal history background check fee are specified in the definition of “fees” in rule 655—3.1(17A,147,152,272C).

(2) The licensee shall have obtained 36 contact hours of continuing education, as specified in 655—Chapter 5, within the 36 months prior to reactivation.

(3) A licensee who has not held an active license in any jurisdiction for the previous five years shall be required to complete a nurse refresher course in accordance with rule 655—3.10(152) within the 12 months prior to reactivation.

(4) Upon receipt of the completed reactivation application, required continuing education materials, certificate of completion of a nurse refresher course (if applicable), two completed fingerprint cards and a signed waiver form to facilitate a national criminal history background check, fees for both the reactivation and the criminal history background check and verification that the primary state of residence is Iowa or a noncompact state, the licensee shall be issued a license for a 24- to 36-month period. At the time of the next renewal, the license will be placed on a three-year renewal cycle. Expiration shall be on the fifteenth day of the licensee’s birth month. The board staff may issue a certificate of license prior to receipt of a report on the applicant from the DCI/FBI.

(5) An applicant who fails to complete the reactivation of licensure process within 12 months from the date of initial application must reapply. All fees are nonrefundable.

3.7(6) *Duplicate wallet card or certificate.* The licensee shall be issued a duplicate wallet card or certificate upon receipt of an application for a duplicate wallet card or certificate and receipt of the fee as specified in rule 655—3.1(17A,147,152,272C). If the licensee notifies the board that the wallet card or certificate has not been received within 60 days after being issued, no fee shall be required. A fee is applicable when the licensee fails to notify the board of a name or address change.

3.7(7) *Reissue of a certificate or wallet card.* The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 655—3.1(17A,147,152,272C). No fee shall be required if an error was made by the board on the original document.

[ARC 8222B, IAB 10/7/09, effective 11/11/09; ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 3465C, IAB 11/22/17, effective 1/1/18; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.8(17A,147,152,272C) Verification. Upon written request from the licensee or another jurisdiction and payment of the verification fee as specified in rule 655—3.1(17A,147,152,272C), the board shall provide a certified statement to another jurisdiction or entity that the license of a registered nurse, licensed practical nurse or advanced registered nurse practitioner is active, inactive or encumbered/disciplined in Iowa.

[ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.9(17A,272C) License denial.

3.9(1) Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that cites the factual and legal basis for denying the application, notifies the applicant of the appeal process and specifies the date upon which the denial will become final if not appealed.

3.9(2) An applicant who has been issued a preliminary notice of denial may appeal the notice and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director within 30 days following the date the preliminary notice of denial was mailed. The request for hearing shall specify the factual or legal errors in the preliminary notice of denial and provide any additional written information or documents in support of the licensure.

3.9(3) All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter 20.

3.9(4) If an applicant does not appeal a preliminary notice of denial, the preliminary notice of denial automatically becomes final and a notice of denial will be issued.

[ARC 7664B, IAB 3/25/09, effective 4/29/09; ARC 1815C, IAB 1/7/15, effective 2/11/15; ARC 2339C, IAB 1/6/16, effective 2/10/16; ARC 4413C, IAB 4/24/19, effective 5/29/19]

655—3.10(152) Nurse refresher course.

3.10(1) A nurse refresher course shall meet the following requirements:

- a. A minimum of 80 hours of theory, with content in basic nursing skills, pharmacology, physical assessment, IV therapy (RN only), and legal and ethical considerations in healthcare; and
- b. A minimum of 80 hours of hands-on supervised clinical learning experiences.

3.10(2) To participate in the clinical component of a nurse refresher course in Iowa, a licensee must have an active license to practice nursing in Iowa or a limited authorization issued by the board. A licensee shall request the limited authorization from the board prior to beginning the clinical component of a nurse refresher course.

3.10(3) To receive a certificate of completion from the nurse refresher course, a licensee must complete all requirements of the nurse refresher course to the satisfaction of the course provider. The course provider shall submit proof of completion of the nurse refresher course directly to the board.

[ARC 4413C, IAB 4/24/19, effective 5/29/19]

These rules are intended to implement Iowa Code chapters 17A, 147, 152, and 272C.

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◊ Two or more ARCs

¹ History relating also to “Licensure to Practice—Licensed Practical Nurse,” Ch 4 prior to IAC 5/23/84.

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CHAPTER 3
POSTING, INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 3]

875—3.1(88) Posting of notice; availability of the Act, regulations and applicable standards.

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the employer or the department of workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the division of labor services.

Reproductions or facsimiles of the state poster shall constitute compliance with the posting requirements of Iowa Code section 88.6(3) “a” where such reproductions or facsimiles are at least 8½ inches by 14 inches, and the printing size is at least 10 point. Whenever the size of the poster increases, the size of the print shall also increase accordingly. The caption or heading on the poster shall be in large type, generally not less than 36 point.

3.1(2) “*Establishment*” means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theatre, farm, ranch, bank, sales office, warehouse, central administrative office or governmental agency or subdivision thereof.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and a separate notice or notices shall be posted in each such establishment, to the extent that such notices have been furnished by the Occupational Safety and Health Administration, U.S. Department of Labor, or the division of labor services. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, communications and electric, gas and sanitary services, the notice or notices required by this rule shall be posted at the location to which employees report each day. Where employees do not usually work at, or report to, a single establishment, such as harbor workers, traveling salespersons, technicians, engineers, and similar personnel, such notice or notices shall be posted at the location from which the employees operate to carry out their activities. In all cases, such notice or notices shall be posted in accordance with the requirements of subrule 3.1(1).

3.1(3) Copies of the Act, all regulations published and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

3.1(4) Any employer failing to comply with the provisions of this rule shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

This rule is intended to implement Iowa Code section 88.6(3) “a.”

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.2(88) Objection to inspection.

3.2(1) Upon a refusal to permit a compliance safety and health officer, in the exercise of official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records or to question any employer, owner, operator, agent or employee, or to permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised. The compliance safety and

health officer shall endeavor to ascertain the reason for such refusal and shall immediately report the refusal and the reason therefor to the labor commissioner or the commissioner's designee. The labor commissioner shall promptly take appropriate action, including compulsory process, if necessary.

3.2(2) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the labor commissioner or a designee, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employer's past practice either implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed, or

b. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

3.2(3) For the purposes of this rule, the term "compulsory process" shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this rule.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.3(88) Entry not a waiver. Any permission to enter, inspect, review records or question any person shall not imply or be conditioned upon a waiver of any cause of action, citation or penalty under the Act. Compliance safety and health officers are not authorized to grant any such waiver.

This rule is intended to implement Iowa Code section 88.6(1).

875—3.4(88) Advance notice of inspections.

3.4(1) Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to ensure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the inspection; and

d. In other circumstances where the labor commissioner or the commissioner's designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before

the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.14(6).

875—3.5(88) Conduct of inspections.

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records they wish to review. However, such designation of records shall not preclude access to additional records.

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of cameras, audio and videotaping equipment, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

3.5(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that such actions with flash, spark-producing or other equipment would not be hazardous. Compliance safety and health officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and they shall wear and use appropriate protective clothing and equipment.

3.5(4) The conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment.

3.5(5) At the conclusion of the inspection, the compliance safety and health officer shall confer with the employer or representative and informally advise the employer or representative of any apparent safety or health violations disclosed by the inspection. During the conference, the employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.

3.5(6) Inspections shall be conducted in accordance with the requirements of this chapter.

This rule is intended to implement Iowa Code section 88.6(1).

[ARC 8522B, IAB 2/10/10, effective 3/17/10]

875—3.6(88) Representatives of employers and employees.

3.6(1) Compliance safety and health officers shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the compliance safety and health officer during the physical inspection of any workplace for the purpose of aiding the inspection. A compliance safety and health officer may permit additional employer representatives and additional representatives authorized by employees to accompany the compliance safety and health officer where the compliance safety and health officer determines that the additional representatives will further aid the inspection. A different employer and employee representative may accompany the compliance safety and health officer during each different phase of an inspection if this will not interfere with the conduct of the inspection.

3.6(2) Compliance safety and health officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for the purpose of this rule. If there is no authorized representative of employees, or if the compliance safety and health officer is unable to determine with reasonable certainty who is the representative, the compliance safety and health officer should consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3.6(3) The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the compliance safety and health officer, good cause has been shown

why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, the third party may accompany the compliance safety and health officer during the inspection.

3.6(4) Compliance safety and health officers are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.7(88) Complaints by employees.

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the identity and the identities of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

3.7(2) If upon receipt of notification the commissioner or a designee determines that the complaint meets the requirements set forth in subrule 3.7(1), and that there are reasonable grounds to believe that the alleged violation exists, an inspection shall be made as soon as practicable, to determine if the alleged violation exists. Inspections under this rule shall not be limited to matters referred to in the complaint.

3.7(3) During any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer of any violation of the Act which they have reason to believe exists in the workplace.

875—3.8(88) Trade or governmental secrets.

3.8(1) At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal trade or governmental secrets. If the compliance safety and health officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs and environmental samples, shall be labeled "confidential-trade/governmental secrets" and shall not be disclosed except in accordance with the provisions of Iowa Code section 88.12.

3.8(2) Upon the request of an employer, any authorized representative of employees in an area containing trade or governmental secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no representative or employee, the compliance safety and health officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.12.

875—3.9(88) Imminent danger. Whenever and as soon as a compliance safety and health officer concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by the Act, the affected employees and employers shall be notified as provided in Iowa Code section 88.11(3). Appropriate citations and notices of proposed penalties may be issued with respect to an imminent danger even though, after being informed of the danger by the compliance safety and health officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate the danger.

875—3.10(88) Consultation with employees. Compliance safety and health officers may consult with employees concerning matters of occupational safety and health to the extent that they deem necessary for

the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which the employee has reason to believe exists in the workplace to the attention of the compliance safety and health officer.

This rule is intended to implement Iowa Code sections 88.6(1) and 88.6(4).

875—3.11(88) Citations.

3.11(1) The civil penalties proposed by the labor commissioner on or after May 29, 2019, are as follows:

a. Willful violation. The penalty for each willful violation under Iowa Code section 88.14(1) shall not be less than \$9,472 and shall not exceed \$132,598.

b. Repeated violation. The penalty for each repeated violation under Iowa Code section 88.14(1) shall not exceed \$132,598.

c. Serious violation. The penalty for each serious violation under Iowa Code section 88.14(2) shall not exceed \$13,260.

d. Other-than-serious violation. The penalty for each other-than-serious violation under Iowa Code section 88.14(3) shall not exceed \$13,260.

e. Failure to correct violation. The penalty for failure to correct a violation under Iowa Code section 88.14(4) shall not exceed \$13,260 per day.

3.11(2) Upon receipt of any citation under the Act, the employer shall immediately post the citation or a copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided in this rule. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, the citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employers are engaged in activities which are physically dispersed, the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation may be posted at the location from which the employees operate to carry out their activities. The employer shall take steps to ensure that the citation is not altered, defaced or covered by other material. Notices of de minimis violations need not be posted.

3.11(3) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the employment appeal board issues a final order vacating the citation.

3.11(4) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the employment appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

3.11(5) Any employer failing to comply with the provisions of subrules 3.11(2) and 3.11(3) shall be subject to citation and penalty in accordance with the provisions of Iowa Code section 88.14.

3.11(6) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.

This rule is intended to implement Iowa Code chapter 88.

[ARC 3557C, IAB 1/3/18, effective 2/11/18; ARC 3810C, IAB 5/23/18, effective 6/30/18; ARC 4412C, IAB 4/24/19, effective 5/29/19]

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the employment appeal board. If the conference is

requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1) "b" and 17A.10.

875—3.13(88) Petitions for modification of abatement date.

3.13(1) An employer may file a petition for modification of abatement date when the employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond its reasonable control.

3.13(2) A petition for modification of abatement date shall be in writing and shall include the following information:

a. All steps taken by the employer, and the dates of the action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons the additional time is necessary, including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition and notice informing affected employees of their rights to party status has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with 3.13(3) "a" and a certification of the date upon which the posting and service was made. A notice in the following form shall be deemed to comply with this paragraph:

(Name of employer)

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: Iowa OSHA, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

3.13(3) A petition for modification of abatement date shall be filed with the labor commissioner or the commissioner's designee no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of the petition and a notice of employee rights complying with 3.13(2) "e" shall be posted in a conspicuous place where all affected employees will have notice thereof or near the location where the violation occurred. The petition and notice of employee rights shall remain posted for a period of ten working days. Where affected employees are represented by an authorized representative, the representative shall be served with a copy of the petition and notice of employee rights.

b. Affected employees or their representatives may file an objection in writing to a petition with the labor commissioner or the commissioner's designee. Failure to file the objection within ten working days of the date of posting of the petition and notice of employee rights or of service upon an authorized representative shall constitute a waiver of any further right to object to the petition.

c. The labor commissioner or the commissioner's designee shall have the authority to approve any filed petition for modification of abatement date. Uncontested petitions shall become final orders pursuant to Iowa Code section 88.8.

d. The labor commissioner or the commissioner's designee shall not exercise approval power until the expiration of 15 working days from the date the petition and notice of employee rights were posted or served by the employer.

3.13(4) Where any petition is objected to by the labor commissioner or the commissioner's designee or affected employees, the petition, citation, and any objections shall be forwarded to the employment appeal board within 3 working days after the expiration of the 15-day period set out in subrule 3.13(3) "d."

This rule is intended to implement Iowa Code section 88.8.
[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.14 to 3.18 Reserved.

875—3.19(88) Abatement verification.

3.19(1) Scope and application. This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) Definitions.

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:
 - The date in the citation for abatement of the violation;
 - The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
 - The date established in a citation by an informal settlement agreement.
2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:
 - The date identified in the final order for abatement; or
 - The date computed by adding the period allowed in the citation for abatement to the final order date;
 - The date established by a formal settlement agreement.

"Affected employees" means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

"Final order date" means:

1. For an uncontested citation item, the fifteenth working day after the employer's receipt of the citation;
2. For a contested citation item:
 - The thirtieth day after the date on which a final order was entered by the employment appeal board or
 - The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

"Movable equipment" means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) Abatement certification.

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph "b" of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

- (1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and
- (2) Notes in the citation that abatement has occurred.

c. The employer's certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

3.19(4) Abatement documentation.

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph "c," documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) Abatement plans.

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

3.19(6) Progress reports.

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

- (1) That periodic progress reports are required and the citation items for which they are required;
- (2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
- (3) Whether additional progress reports are required; and
- (4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

3.19(7) Employee notification.

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

- (1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
- (2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.
- (3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee's or employee representative's request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

- (1) Not altered, defaced, or covered by other material; and
- (2) Remain posted for three working days after submission to the division.

3.19(8) Transmitting abatement documents.

a. The employer must include, in each submission required by this rule, the following information:

1. The employer's name and address;
 2. The inspection number to which the submission relates;
 3. The citation and item numbers to which the submission relates;
 4. A statement that the information submitted is accurate; and
 5. The signature of the employer or the employer's authorized representative.
- b.* The date of postmark is the date of submission for mailed documents. For documents transmitted by other means, the date the division receives the document is the date of submission.

3.19(9) Movable equipment.

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued. A sample tag is available at osha.gov as Appendix C to 29 CFR 1903.19.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

- (1) For hand-held equipment, immediately after the employer receives the citation; or
- (2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph "b," is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

- (1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;
- (2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or
- (3) The appeal board issues a final order vacating the citation.

[ARC 3557C, IAB 1/3/18, effective 2/11/18]

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

875—3.21 Reserved.

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) *Training format.* The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) *Review by the division.* The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the employer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

875—3.23(88) Definitions. The definitions and interpretations contained in Iowa Code section 88.3 shall be applicable to the terms when used in this chapter. As used in this chapter unless the context clearly requires otherwise:

"*Act*" means the Iowa Occupational Safety and Health Act of 1972, Iowa Code chapter 88.

"*Compliance safety and health officer*" means a person authorized by the labor commissioner of the department of workforce development, division of labor services, to conduct inspections.

"*Division*" means the Iowa division of labor of the department of workforce development.

"*Inspection*" means any inspection of an employer's factory, plant, establishment, construction site or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a filed complaint, and any follow-up inspection, accident investigation or other inspections conducted under the Act.

“*Working days*” means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

This rule is intended to implement Iowa Code section 88.6.

875—3.24(88) Occupational safety and health bureau forms. Rescinded **ARC 3557C**, IAB 1/3/18, effective 2/11/18.

These rules are intended to implement Iowa Code chapters 17A and 88.

[Filed August 29, 1972]

[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]

[Filed emergency 11/20/79—published 12/12/79, effective 11/20/79]

[Filed 1/31/80, Notice 12/26/79—published 2/20/80, effective 3/28/80]

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[Filed ARC 8522B (Notice ARC 8378B, IAB 12/16/09), IAB 2/10/10, effective 3/17/10]

[Filed ARC 3557C (Notice ARC 3415C, IAB 10/25/17), IAB 1/3/18, effective 2/11/18]

[Filed ARC 3810C (Notice ARC 3702C, IAB 3/28/18), IAB 5/23/18, effective 6/30/18]

[Filed ARC 4412C (Notice ARC 4318C, IAB 2/27/19), IAB 4/24/19, effective 5/29/19]

CHAPTER 4
RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 4]

875—4.1(88) Purpose and scope. These rules provide for record keeping and reporting by employers covered under Iowa Code chapter 88 as necessary or appropriate for enforcement of the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation and analysis of occupational safety and health statistics. This chapter applies to public and private employers, and the use of the word “company” or “companies” in the standard adopted by reference herein shall not limit the scope or application of this chapter to private employers.

875—4.2(88) First reports of injury. All employers shall report to the Iowa division of workers’ compensation any occupational injury or illness which temporarily disables an employee for more than three days or which results in permanent total disability, permanent partial disability or death. This report shall be made within four days from such event when such injury or illness is alleged by the employee to have been sustained in the course of the employee’s employment. First reports of injury are to be filed in the form and manner required by the division of workers’ compensation. A report to the division of workers’ compensation is considered to be a report to the division of labor services. The division of workers’ compensation shall forward all reports to the division of labor services. This rule does not excuse employers from making reports required by rule 875—4.3(88).

[ARC 1782C, IAB 12/10/14, effective 1/14/15]

875—4.3(88) Recording and reporting regulations. Except as noted in this rule, the Federal Occupational Safety and Health Administration regulations at 29 CFR 1904.0 through 1904.46 as published at 66 Fed. Reg. 6122 to 6135 (January 19, 2001) are adopted.

4.3(1) The following amendments to 29 CFR 1904.0 through 1904.46 are adopted:

- a. 66 Fed. Reg. 52031-52034 (October 12, 2001)
- b. 67 Fed. Reg. 44047 (July 1, 2002)
- c. 67 Fed. Reg. 77170 (December 17, 2002)
- d. 68 Fed. Reg. 38606 (June 30, 2003)
- e. 79 Fed. Reg. 56186 (September 18, 2014)
- f. 81 Fed. Reg. 29691 (May 12, 2016)
- g. 81 Fed. Reg. 31854 (May 20, 2016)
- h. 84 Fed. Reg. 405 (January 25, 2019)

4.3(2) In addition to the reporting methods set forth in 29 CFR 1904.39(a), employers may make reports required by 29 CFR 1904.39 using at least one of the following methods:

- a. Completing the incident report form available at www.iowaosha.gov and faxing the completed form to (515)242-5076 or sending the completed form to osha@iwd.iowa.gov;
- b. Calling (877)242-6742; or
- c. Visiting 1000 E. Grand Avenue, Des Moines, Iowa.

[ARC 1782C, IAB 12/10/14, effective 1/14/15; ARC 2688C, IAB 8/31/16, effective 11/1/16; ARC 4412C, IAB 4/24/19, effective 5/29/19]

875—4.4(88) Supplementary record. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.5(88) Annual summary. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.6(88) Retention of records. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.7(88) Access to records. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.8(88) Reporting of fatality or multiple hospitalization incidents. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.9(88) Falsification or failure to keep records or reports. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.10(88) Change of ownership. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.11 Reserved.

875—4.12(88) Petitions for record-keeping exceptions. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.13(88) Description of statistical program. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.14(88) Duties. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.15(88) Employees not in fixed establishments. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.16(88) Small employers. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.17(88) Bureau of inspections and reporting, research and statistical section forms. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.18(88) Definitions. Rescinded IAB 1/23/02, effective 1/1/02.

875—4.19(88) Establishments classified in Standard Industrial Classification Codes (SIC) 52-89 (except 52-54, 70, 75, 76, 79 and 80). Rescinded IAB 1/23/02, effective 1/1/02.

These rules are intended to implement Iowa Code chapter 88.

[Filed July 13, 1972; amended August 29, 1972, December 1, 1972, April 2, 1973, February 28, 1975]

[Filed 12/15/75, Notice 10/6/75—published 12/29/75, effective 2/4/76]

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[Filed 3/15/78, Notice 2/8/78—published 4/5/78, effective 5/15/78]

[Filed 11/2/78, Notice 9/20/78—published 11/15/78, effective 12/22/78]

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CHAPTER 8
SUBSTANTIVE AND INTERPRETIVE RULES

[Prior to 9/24/86 see Industrial Commissioner[500]]

[Prior to 1/29/97 see Industrial Services Division[343]]

[Prior to 7/29/98 see Industrial Services Division[873]Ch 8]

876—8.1(85) Transportation expense. Transportation expense as provided in Iowa Code sections 85.27 and 85.39 shall include but not be limited to the following:

1. The cost of public transportation if tendered by the employer or insurance carrier.
2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto from August 1, 2005, through June 30, 2006, shall be 40.5 cents. For annual periods beginning July 1, 2006, and thereafter, the per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.
3. Meals and lodging if reasonably incident to the examination.
4. Taxi fares or other forms of local transportation if incident to the use of public transportation.
5. Ambulance service or other special means of transportation if deemed necessary by competent medical evidence or by agreement of the parties.

Transportation expense in the form of reimbursement for mileage which is incurred in the course of treatment or an examination, except under Iowa Code section 85.39, shall be payable at such time as 50 miles or more have accumulated or upon completion of medical care, whichever occurs first. Reimbursement for mileage incurred under Iowa Code section 85.39 shall be paid within a reasonable time after the examination.

The workers' compensation commissioner or a deputy commissioner may order transportation expense to be paid in advance of an examination or treatment. The parties may agree to the advance payment of transportation expense.

This rule is intended to implement Iowa Code sections 85.27 and 85.39.

876—8.2(85) Overtime. The word "overtime" as used in Iowa Code section 85.61 means amounts due in excess of the straight time rate for overtime hours worked. Such excess amounts shall not be considered in determining gross weekly wages within Iowa Code section 85.36. Overtime hours at the straight time rate are included in determining gross weekly earnings.

This rule is intended to implement Iowa Code sections 85.36 and 85.61.

876—8.3 Rescinded, effective July 1, 1982.

876—8.4(85) Salary in lieu of compensation. The excess payment made by an employer in lieu of compensation which exceeds the applicable weekly compensation rate shall not be construed as advance payment with respect to either future temporary disability, healing period, permanent partial disability, permanent total disability or death.

This rule is intended to implement Iowa Code sections 85.31, 85.34, 85.36, 85.37 and 85.61.

876—8.5(85) Appliances. Appliances are defined as hearing aids, corrective lenses, orthodontic devices, dentures, orthopedic braces, or any other artificial device used to provide function or for therapeutic purposes.

Appliances which are for the correction of a condition resulting from an injury or appliances which are damaged or made unusable as a result of an injury or avoidance of an injury are compensable under Iowa Code section 85.27.

876—8.6(85,85A) Calendar days—decimal equivalent. Weekly compensation benefits payable under Iowa Code chapters 85 and 85A are based upon a seven-day calendar week. Each day of weekly compensation benefits due may be paid by multiplying the employee's weekly compensation benefit rate by the decimal equivalents of the number of days as follows:

1 day	=	.143	×	weekly rate
2 days	=	.286	×	weekly rate
3 days	=	.429	×	weekly rate
4 days	=	.571	×	weekly rate
5 days	=	.714	×	weekly rate
6 days	=	.857	×	weekly rate

This rule is intended to implement Iowa Code sections 85.31, 85.33 and 85.34.

876—8.7(86) Short paper. All filings before the workers' compensation commissioner shall be on white paper measuring 8½ inches by 11 inches.

This rule is intended to implement Iowa Code section 86.18.

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, 2019, through June 30, 2020, are the tables in effect on July 1, 2019, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A [2018].)
2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective January 1, 2019].)
3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [2018].)

This rule is intended to implement Iowa Code section 85.61(6).

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876—8.9(85,86) Exchange of records. Whether or not a contested case has been commenced, upon the written request of an employee or the representative of an employee who has alleged an injury arising out of and in the course of employment, an employer or insurance carrier shall provide the claimant a copy of all records and reports in its possession generated by a medical provider.

Whether or not a contested case has been commenced, upon the written request of the employer or insurance carrier against which an employee has alleged an injury arising out of and in the course of employment, the employee shall provide the employer or insurance carrier with a patient's waiver. See rules 876—3.1(17A) and 876—4.6(85,86,17A) for the waiver form used in contested cases. Claimant shall cooperate with the employer and insurance carrier to provide patients' waivers in other forms and to update patients' waivers where requested by a medical practitioner or institution.

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be the actual expense to prepare duplicates not to exceed: \$20 for 1 to 20 pages; \$20 plus \$1 per page for 21 to 30 pages; \$30 plus \$.50 per page for 31 to 100 pages; \$65 plus \$.25 per page for 101 to 200 pages; \$90 plus \$.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed.

EXAMPLE 1. For 7 pages of records the amount to be paid for furnishing duplicates shall not exceed \$20.

EXAMPLE 2. For 28 pages of records the amount to be paid for furnishing duplicates shall not exceed \$28 (\$20 plus (8 times \$1)).

EXAMPLE 3. For 41 pages of records the amount to be paid for furnishing duplicates shall not exceed \$35.50 (\$30 plus (11 times \$.50)).

EXAMPLE 4. For 127 pages of records the amount to be paid for furnishing duplicates shall not exceed \$71.75 (\$65 plus (27 times \$.25)).

EXAMPLE 5. For 210 pages of records the amount to be paid for furnishing duplicates shall not exceed \$91 (\$90 plus (10 times \$.10)).

This rule is intended to implement Iowa Code sections 85.27, 85.31, 85.33 to 85.37, 85.39, 85.61, 86.8, 86.10, 86.18 and 86.39.

876—8.10(85B) Apportionment of age-related loss for occupational hearing loss claims.

8.10(1) Effective date. This rule is effective for claims for occupational hearing loss filed on or after July 1, 1998.

8.10(2) Purpose. The purposes of this rule are to adopt tables and the method for calculating age-related hearing loss and to adopt a worksheet for apportionment of age-related hearing loss for occupational hearing loss claims.

8.10(3) Table. In 1972 the National Institute for Occupational Safety and Health (NIOSH) published the Criteria for a Recommended Standard: Occupational Exposure to Noise (NIOSH Publication No.73-11001). Table B-1, page I-16, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Males and Table B-2, page I-17, provides the Age Corrections Values to be Used for Age Correction of Initial Baseline Audiograms for Females. These NIOSH tables are used to calculate the correction value for age for males and females for 500, 1000, 2000 and 3000 hertz.

For example, the age correction for a male 21 years of age is 10 decibels at 500 hertz, 5 decibels at 1000 hertz, 3 decibels at 2000 hertz and 4 decibels at 3000 hertz. The correction for age is 5.50 decibels (the sum of 10+5+3+4 divided by 4).

The following table is to be used to determine an employee's age-related change in hearing level during the period of employment. To determine the age-related change in hearing level in decibels during the period of employment, subtract the value shown in the table for the employee's age at the beginning of employment from the value shown in the table for the employee's age on the date of injury.

NOTE: This table should not be used to compute standard threshold shift as required by rules of the Occupational Safety and Health Administration or Iowa occupational safety and health administration.

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
20 or younger	5.50	7.25
21	5.50	7.75
22	5.50	7.75
23	5.50	8.00
24	5.75	8.00
25	6.00	8.25
26	6.25	8.50
27	6.50	8.75
28	6.75	8.75
29	6.75	8.75
30	6.75	9.00
31	7.25	9.25
32	7.50	9.50
33	7.50	9.75
34	7.75	9.75
35	8.00	10.00
36	8.25	10.25
37	8.75	10.25

<u>Age in Years</u>	<u>Correction in dB</u>	
	<u>Males</u>	<u>Females</u>
38	8.75	10.50
39	9.00	11.00
40	9.00	11.00
41	9.25	11.25
42	10.00	11.50
43	10.25	11.75
44	10.25	12.00
45	10.50	12.25
46	10.75	12.50
47	11.00	12.50
48	11.50	13.00
49	12.00	13.25
50	12.25	13.50
51	12.25	13.75
52	12.75	13.75
53	13.25	14.25
54	13.50	14.50
55	14.00	15.00
56	14.25	15.00
57	14.50	15.25
58	15.25	15.75
59	15.50	16.00
60 or older	16.00	16.25

8.10(4) Apportionment. The apportionment of age-related hearing loss shall be made by reducing the total binaural percentage hearing loss as calculated pursuant to Iowa Code section 85B.9(3) by the same percentage as the decibels of age-related change in hearing level occurring during the period of employment bears to the total decibel hearing level in each ear.

Age-related hearing loss is apportioned using the results of the audiogram determined to be the proper audiogram for measurement of the employee's hearing loss on the date of injury by using the following steps:

1. Separately for each ear, compute the average of the employee's decibel hearing levels at 500, 1000, 2000, and 3000 hertz for that ear.
2. Separately for each ear, compute the percentage loss for each ear.
3. Compute the employee's age-related change in hearing level in decibels during the period of employment using the table in subrule 8.10(3).
4. Separately for each ear, divide the result of step 3 by the result of step 1 to compute the age-correction factor for that ear.
5. Separately for each ear, multiply the total percentage hearing loss in that ear calculated pursuant to Iowa Code section 85B.9 by the age-correction factor for that ear.
6. Separately for each ear, subtract the result obtained in step 5 from the total percentage hearing loss in that ear to obtain the age-corrected hearing loss for that ear.
7. Multiply the age-corrected hearing loss in the better ear as calculated in step 6 by 5 and add the percentage hearing loss in the worse ear.
8. Divide the result obtained in step 7 by 6 to obtain the age-corrected binaural percentage hearing loss.

8.10(5) Worksheet. The following worksheet is used to calculate the percentage of age-corrected binaural hearing loss.

APPORTIONMENT OF PERCENT HEARING LOSS FOR AGE

	<u>Left Ear Hearing Level</u>	<u>Frequency in Hertz</u>	<u>Right Ear Hearing Level</u>
1.	_____	500	_____
2.	_____	1000	_____
3.	_____	2000	_____
4.	_____	3000	_____
5.	_____	total of lines 1 through 4	_____
	divide by 4	(divide the "total" by 4)	divide by 4
6.	_____	equals average equals	_____
	minus 25	subtract "low fence"	minus 25
7.	_____	equals "Excess"	_____
	multiply by 1.5	multiply % factor	multiply by 1.5
8.	_____	equals % loss each ear	_____
	(% loss left ear)		(% loss right ear)
9.	Age on date of injury _____		
10.	Age at beginning of employment _____		
11.	_____	correction for age on date of injury in dB from table minus	
12.	_____	correction for age at beginning of employment in dB from table equals	
13.	_____	age-related change in hearing level during employment in dB	
	<u>LEFT EAR</u>		<u>RIGHT EAR</u>
	Divide age-related change in hearing level from line 13 by average hearing level from line 6		
	To obtain		
14.	_____	age correction factor	_____
	multiply % loss from line 8 by age-correction factor from line 14		
	To obtain		
15.	_____	deduction for age-correction	_____
	subtract line 15 from line 8		
	To obtain		
16.	_____	age-corrected percent hearing loss	_____
	<u>BINAURAL PERCENTAGE LOSS</u>		
17.	_____	% loss better ear (smaller amount) from line 16, multiplied by 5 plus	

18. _____ % loss worse ear (larger amount)
from line 16
19. _____ equals
divided
by 6
equals
20. _____ % age-corrected binaural hearing loss

This rule is intended to implement Iowa Code sections 85B.9A and 86.8.

876—8.11(85) Offer of suitable work. The employer shall communicate an offer of temporary work to the employee in writing, including the details of lodging, meals, and transportation. With each offer of temporary work, the employer shall notify the employee in writing that:

1. If the employee refuses the offer of temporary work, the employee shall communicate the refusal and the reason for the refusal to the employer in writing;
2. During the period of refusal, the employee will not be compensated with temporary partial, temporary total, or healing period benefits unless the work refused is not suitable; and
3. Failure to communicate the reason for the refusal to the employer in writing precludes the employee from raising suitability of the work as the reason for the refusal until such time as the reason for the refusal is communicated in writing to the employer.

This rule is intended to implement Iowa Code section 85.33.

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[◇] Two or more ARCs

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