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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.

Editor's telephone (515) 281-3355 or (515) 281-8157

Iowa Finance Authority[265]

Replace Analysis
Replace Chapter 3

Education Department[281]

Replace Analysis
Replace Chapter 56
Replace Chapter 83

Educational Examiners Board[282]

Replace Chapter 11

Ethics and Campaign Disclosure Board, Iowa[351]

Replace Analysis
Replace Chapter 4
Replace Chapter 8

Human Services Department[441]

Replace Chapters 75 and 76

Natural Resources Department[561]

Replace Analysis
Remove Reserved Chapters 15 to 101
Insert Chapter 15 and Reserved Chapters 16 to 101

Natural Resource Commission[571]

Replace Analysis
Replace Chapter 12
Replace Chapter 44
Replace Chapters 61 and 62

Public Health Department[641]

Replace Analysis
Replace Chapter 6 with Reserved Chapter 6
Replace Chapter 29
Replace Chapters 83 and 84 with Reserved Chapters 83 and 84
Replace Chapter 88
Replace Chapter 155

Replace Chapter 157
Remove Reserved Chapters 159 to 161 and Chapter 162
Replace Reserved Chapters 163 to 169 with Reserved Chapters 159 to 169
Replace Chapters 191 to 193
Replace Chapter 195

Nursing Board[655]

Replace Chapters 3 and 4

Secretary of State[721]

Replace Analysis
Replace Chapter 21

Labor Services Division[875]

Replace Analysis
Replace Chapter 150

Index

Replace “M” to “O”

IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

CHAPTER 1
GENERAL

1.1(16) Purpose
1.2(16) Mission
1.3(16) Organization, programs and operations
1.4(16) Location where the public may submit requests or obtain information
1.5(16) Forms

CHAPTER 2
LOAN PROGRAMS

GENERAL PROVISIONS

2.1(16) Administrative agents

TERMS AND CONDITIONS

2.2(16) Interest and fees
2.3 Reserved
2.4(16) Loan conditions
2.5(16) Security for loans
2.6(16) Types of loans
2.7(16) Delinquency and foreclosure
2.8(16) Application processing
2.9(16) Mortgage purchase or loans to lenders for existing, newly built single-family or multifamily housing—general information
2.10(16) Assumption of mortgages

CHAPTER 3
MULTIFAMILY HOUSING

DIVISION I
MULTIFAMILY LOAN PROGRAM

3.1(16) Purpose
3.2(16) Available funds
3.3(16) Intent of the authority
3.4(16) Application procedure
3.5(16) Program guidelines
3.6(16) Multifamily loan program for preservation of affordable housing
3.7(16) Multifamily loan program for low-income housing tax credits
3.8(16) Multifamily loan program for workforce housing loan assistance
3.9(16) Multifamily loan program for substantial rehabilitation of nonrestricted projects
3.10(16) Authority analysis of applications
3.11(16) Discretion of authority board
3.12(16) Closing/advance of funds
3.13 to 3.19 Reserved

DIVISION II
PREDEVELOPMENT LOAN FUND

3.20(16) Purpose
3.21(16) Available funds
3.22(16) Intent of the authority
3.23(16) Application procedure

3.24(16) Fund guidelines
3.25(16) Authority analysis of applications
3.26(16) Discretion of authority board
3.27(16) Closing/advance of funds
3.28 to 3.30 Reserved

DIVISION III
GAP FINANCING FUND

3.31(16) Purpose
3.32(16) Intent of the authority
3.33(16) Application procedure
3.34(16) Fund guidelines
3.35(16) Authority analysis of applications
3.36(16) Discretion of authority board
3.37(16) Closing/advance of funds

CHAPTER 4
GENERAL REVENUE BOND PROCEDURES

4.1(16) Revenue bonds authorized
4.2(16) Participating lenders
4.3(16) Procedures for project sponsors
4.4(16) Authority review
4.5(16) Public hearing and approval
4.6(16) Procedures following bond issuance
4.7(16) Right to audit

CHAPTER 5
SMALL BUSINESS LOAN PROGRAM

PART I
GENERAL

5.1(16) Program description
5.2(16) Waiver
5.3(16) Urban revitalization
5.4 to 5.9 Reserved

PART II
DEFINITIONS

5.10(16) Definitions
5.11 to 5.19 Reserved

PART III
LOAN CRITERIA AND DOCUMENTATION

5.20(16) Application
5.21(16) Public benefit
5.22(16) Loan criteria
5.23(16) Good character

CHAPTER 6
GROUP HOME FACILITIES LOAN PROGRAM

PART I
GENERAL

6.1(16) Program description
6.2(16) Waiver
6.3 to 6.9 Reserved

PART II
DEFINITIONS

6.10(16) Definitions
6.11 to 6.19 Reserved

PART III
LOAN CRITERIA AND DOCUMENTATION

6.20(16) Application
6.21(16) Public benefit
6.22(16) Eligibility

CHAPTER 7
CONTESTED CASES

7.1(17A) Scope and applicability
7.2(17A) Definitions
7.3(17A) Time requirements
7.4(17A) Requests for contested case proceeding
7.5(17A) Notice of hearing
7.6(17A) Presiding officer
7.7(17A) Waiver of procedures
7.8(17A) Telephone or video proceedings
7.9(17A) Disqualification
7.10(17A) Consolidation—severance
7.11(17A) Pleadings
7.12(17A) Service and filing of pleadings and other papers
7.13(17A) Discovery
7.14(17A) Subpoenas
7.15(17A) Motions
7.16(17A) Prehearing conference
7.17(17A) Continuances
7.18(17A) Withdrawals
7.19(17A) Intervention
7.20(17A) Hearing procedures
7.21(17A) Evidence
7.22(17A) Default
7.23(17A) Ex parte communication
7.24(17A) Recording costs
7.25(17A) Interlocutory appeals
7.26(17A) Posthearing procedures and orders
7.27(17A) Appeals and review
7.28(17A) Applications for rehearing
7.29(17A) Stays of authority actions
7.30(17A) No factual dispute contested cases
7.31(17A) Emergency adjudicative proceedings
7.32(17A,16) Informal procedure prior to hearing

CHAPTER 8
PRIVATE ACTIVITY BOND ALLOCATION

8.1(7C) General
8.2(7C) Forms
8.3(7C) Formula for allocation
8.4(7C) Application for allocation
8.5(7C) Certification of allocation
8.6(7C) State ceiling carryforwards

8.7(7C) Expiration dates
8.8(7C) Resubmission of expired allocations
8.9(7C) Use by political subdivisions
8.10(7C) Application and allocation fees
8.11(7C) Supplemental cap allocation for 2008

CHAPTER 9
TITLE GUARANTY DIVISION

9.1(16) Definitions
9.2(16) Purpose
9.3(16) Mission
9.4(16) Organization
9.5(16) Location where public may obtain information
9.6(16) Title guaranty program
9.7(16) Waiver of up-to-date title plant requirement
9.8(16) Title guaranty contracts, forms, manual, and staff supplements
9.9(16) Mortgage release certificate
9.10(16) Rates
9.11(16) Claims
9.12(16) Rules of construction
9.13(16) Seal
9.14 and 9.15 Reserved
9.16(16) Forms, endorsements, and manuals
9.17(16) Application for waiver of participation requirements
9.18(16) Rates
9.19(16) Charges

CHAPTER 10
MORTGAGE CREDIT CERTIFICATES

10.1(16) General
10.2(16) Participating lenders
10.3(16) Eligible borrowers
10.4(16) MCC procedures

CHAPTER 11
IOWA MAIN STREET LOAN PROGRAM

11.1(16) Program description
11.2(16) Waiver
11.3(16) Main street loan program
11.4(16) Definitions
11.5(16) Application
11.6(16) Public benefit
11.7(16) Loan criteria

CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

12.1(16) Qualified allocation plan
12.2(16) Location of copies of the plan
12.3(16) Compliance manual
12.4(16) Location of copies of the manual

CHAPTER 13
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

13.1(17A,22) Definitions
13.3(17A,22) Requests for access to records
13.4(17A,22) Access to confidential records
13.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
13.9(17A,22) Availability of records

CHAPTER 14
HOMELESS SHELTER ASSISTANCE PROGRAM

14.1(16) General
14.2(16) Eligible applicants
14.3(16) Eligible activities
14.4(16) Application procedure
14.5(16) Application review criteria
14.6(16) Maximum grant award
14.7(16) Contracts

CHAPTER 15
PURCHASING

15.1(16) Applicability of competitive bidding
15.2(16) Methods of obtaining bids or proposals used by the authority
15.3(16) Items purchased through the department of administrative services
15.4(16) Advertising solicitations
15.5(16) Contract purchases
15.6(16) Blanket purchase agreements
15.7(16) Bids and proposals to conform to specifications
15.8(16) Time of delivery
15.9(16) Cash discounts
15.10(16) Ties
15.11(16) Time of submission
15.12(16) Modification or withdrawal of bids
15.13(16) Financial security
15.14(16) Rejection of bids and proposals
15.15(16) Vendor appeals

CHAPTER 16
DECLARATORY ORDERS

16.1(17A) Petition for declaratory order
16.2(17A) Notice of petition
16.3(17A) Intervention
16.4(17A) Briefs
16.5(17A) Inquiries
16.6(17A) Service and filing of petitions and other papers
16.7(17A) Consideration
16.8(17A) Action on petition
16.9(17A) Refusal to issue order
16.10(17A) Contents of declaratory order—effective date
16.11(17A) Copies of orders
16.12(17A) Effect of a declaratory order

CHAPTER 17
PROCEDURE FOR RULE MAKING

17.1(17A) Applicability
17.2(17A) Advice on possible rules before notice of proposed rule adoption
17.3(17A) Public rule-making docket
17.4(17A) Notice of proposed rule making
17.5(17A) Public participation
17.6(17A) Regulatory analysis
17.7(17A,25B) Fiscal impact statement
17.8(17A) Time and manner of rule adoption
17.9(17A) Variance between adopted rule and published notice of proposed rule adoption
17.10(17A) Exemptions from public rule-making procedures
17.11(17A) Concise statement of reasons
17.12(17A) Contents, style, and form of rule
17.13(17A) Authority rule-making record
17.14(17A) Filing of rules
17.15(17A) Effectiveness of rules prior to publication
17.16(17A) General statements of policy
17.17(17A) Review by authority of rules

CHAPTER 18
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

18.1(17A,16) Definitions
18.2(17A,16) Scope
18.3(17A,16) Applicability of chapter
18.4(17A,16) Criteria for waiver or variance
18.5(17A,16) Filing of petition
18.6(17A,16) Content of petition
18.7(17A,16) Additional information
18.8(17A,16) Notice
18.9(17A,16) Hearing procedures
18.10(17A,16) Ruling
18.11(17A,16) Public availability
18.12(17A,16) Summary reports
18.13(17A,16) Voiding or cancellation
18.14(17A,16) Violations
18.15(17A,16) Defense
18.16(17A,16) Judicial review

CHAPTER 19
STATE HOUSING TRUST FUND

19.1(16) Trust fund allocation plans
19.2(16) Location of copies of the plans

CHAPTER 20
SENIOR LIVING REVOLVING LOAN PROGRAM

20.1(16) Purpose
20.2(16) Priority of loan awards
20.3(16) Application process
20.4(16) Program guidelines
20.5(16) Authority analysis of applications
20.6(16) Discretion of authority board
20.7(16) Closing/advance of funds

CHAPTER 21
HOME AND COMMUNITY-BASED SERVICES REVOLVING LOAN PROGRAM

21.1(16) Purpose
21.2(16) Available funds
21.3(16) Intent of the authority
21.4(16) Application procedure
21.5(16) Program guidelines
21.6(16) Authority analysis of applications
21.7(16) Discretion of authority board
21.8(16) Closing/advance of funds

CHAPTER 22
IOWA AFTERCARE SERVICES RENT SUBSIDY PROGRAM

22.1(16,PL106-169) Purpose
22.2(16,PL106-169) Definitions
22.3(16,PL106-169) Eligibility requirements for direct rent subsidy
22.4(16,PL106-169) Application for direct rent subsidy
22.5(16,PL106-169) Amount of rent subsidy
22.6(16,PL106-169) Redetermination of direct rent subsidy eligibility
22.7(16,PL106-169) Termination of rent subsidy payments
22.8(16,PL106-169) Eligibility requirements for transitional apartment subsidy
22.9(16,PL106-169) Application for transitional apartment subsidy
22.10(16,PL106-169) Amount of transitional apartment subsidy
22.11(16,PL106-169) Redetermination of transitional apartment subsidy eligibility
22.12(16,PL106-169) Termination of transitional apartment subsidy payments
22.13(16,PL106-169) Fraudulent practices relating to the aftercare rent subsidy program
22.14(16,PL106-169) Appeals

CHAPTER 23
TRANSITIONAL HOUSING REVOLVING LOAN PROGRAM

23.1(16) Purpose
23.2(16) Priority of loan awards
23.3(16) Application process
23.4(16) Program guidelines
23.5(16) Authority analysis of applications
23.6(16) Discretion of authority board
23.7(16) Closing/advance of funds

CHAPTER 24
HOME AND COMMUNITY-BASED SERVICES RENT SUBSIDY PROGRAM

24.1(16) Purpose
24.2(16) Definitions
24.3(16) Eligibility requirements
24.4(16) Application
24.5(16) Amount of rent subsidy
24.6(16) Redetermination of eligibility
24.7(16) Termination of rent subsidy payments
24.8(16) Fraudulent practices relating to the rent subsidy program
24.9(16) Appeals

CHAPTER 25
ENTREPRENEURS WITH DISABILITIES PROGRAM

25.1(16) Purpose
25.2(16) Definitions
25.3(16) Eligibility requirements
25.4(16) Application procedure
25.5(16) Award of technical assistance grants
25.6(16) Financial assistance grants
25.7(16) Monitoring

CHAPTER 26
WATER POLLUTION CONTROL WORKS AND
DRINKING WATER FACILITIES FINANCING

26.1(16) Statutory authority
26.2(16) Purpose
26.3(16) Definitions
26.4(16) Project funding
26.5(16) WPCSRF/DWSRF infrastructure construction loans
26.6(16) Planning and design loans
26.7(16) Disadvantaged community status
26.8(16) WPCSRF nonpoint source set-aside loan programs
26.9(16) Termination and rectification of disputes

CHAPTER 27
MILITARY SERVICE MEMBER HOME OWNERSHIP ASSISTANCE PROGRAM

27.1(16) Purpose
27.2(16) Definitions
27.3(16) Application procedure and determination of eligibility
27.4(16) Grant award
27.5(16) Income, purchase price and qualified mortgage

CHAPTER 28
WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM

28.1(81GA,HF2782) Overview
28.2(81GA,HF2782) Definitions
28.3(81GA,HF2782) Project funding
28.4(81GA,HF2782) Termination; rectification of deficiencies; disputes

CHAPTER 29
JUMP-START HOUSING ASSISTANCE PROGRAM

29.1(16) Purpose
29.2(16) Definitions
29.3(16) Grants to local government participants
29.4 Reserved
29.5(16) Eligible uses
29.6(16) Loan terms
29.7(16) Financial assistance subject to availability of funding
29.8(16) Funds allocated pursuant to 2009 Iowa Acts, House File 64, division I

CHAPTER 30
QUALIFIED MIDWESTERN DISASTER AREA BOND ALLOCATION

30.1(16) General
30.2(16) Forms

30.3(16) Eligibility for allocation
30.4(16) Allocation limit and Iowa department of economic development set-aside
30.5(16) Application for allocation
30.6(16) Certification of allocation
30.7(16) Expiration of allocations
30.8(16) Resubmission of expired allocations
30.9(16) Application and allocation fees

CHAPTER 31
COUNCIL ON HOMELESSNESS
31.1(16) Organization
31.2(16) Duties of the council

CHAPTER 32
IOWA JOBS PROGRAM
32.1(16) Purpose
32.2(16) Definitions
32.3(16) Allocation of funds
32.4(16) Local infrastructure competitive grant program
32.5(16) Noncompetitive grants
32.6(16) General grant conditions
32.7(16) Calculation of jobs created
32.8(16) Grant awards
32.9(16) Administration of awards

CHAPTER 33
WATER QUALITY FINANCIAL ASSISTANCE PROGRAM
33.1(16,83GA,SF376) Overview
33.2(16,83GA,SF376) Definitions
33.3(16,83GA,SF376) Small community assistance fund
33.4(16,83GA,SF376) Large community assistance fund
33.5(16,83GA,SF376) Project priority
33.6(16,83GA,SF376) Project funding
33.7(16,83GA,SF376) Termination and rectification of disputes

CHAPTER 34
Reserved

CHAPTER 35
AFFORDABLE HOUSING ASSISTANCE GRANT FUND
35.1(16) Affordable housing assistance grant fund allocation plan
35.2(16) Location of copies of the plan

CHAPTER 36
PUBLIC SERVICE SHELTER GRANT FUND
36.1(16,83GA,SF376) Public service shelter grant fund allocation plan
36.2(16,83GA,SF376) Location of copies of the plan

CHAPTER 37
RECOVERY ZONE BOND ALLOCATION
37.1(16) General
37.2(16) Forms
37.3(16) Notice from the authority to issuers
37.4(16) Notice from issuers to the authority

37.5(16)	Waiver of RZ bonding authority
37.6(16)	Application for allocation of recaptured or waived RZ bond authority
37.7(16)	Allocations
37.8(16)	Certification of allocation
37.9(16)	Expiration of allocations
37.10(16)	Resubmission of expired allocations
37.11(16)	Application and allocation fees

CHAPTER 3
MULTIFAMILY HOUSING

DIVISION I
MULTIFAMILY LOAN PROGRAM

265—3.1(16) Purpose. Through its multifamily loan program (program), the authority seeks to preserve the existing supply of affordable rental units at risk of being lost and to foster the production of new affordable rental units in the state.

265—3.2(16) Available funds. The authority anticipates that it will, from time to time, publicize the approximate amount of funds available under this program on the authority's Web site at www.iowafinanceauthority.gov.

265—3.3(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans and grants under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will work to foster affordable housing in the state in a manner that best serves the citizens of the state.

265—3.4(16) Application procedure. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site as contacts for this program. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

265—3.5(16) Program guidelines. For-profit and nonprofit sponsors are eligible to apply for assistance under this program. There are three categories of loans under this program: preservation of affordable housing, low-income housing tax credits, and substantial rehabilitation of nonrestricted projects.

3.5(1) Projects eligible for assistance must meet the following criteria, in addition to any specific requirements applicable to a particular category of loan as set forth in rule 265—3.6(16), 265—3.7(16), 265—3.8(16), or 265—3.9(16), as applicable:

a. Both a demonstrated market need for the units must exist and the project must be in a good location, as determined by the authority in its sole discretion.

b. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

c. Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

d. The maximum loan term is 24 months for construction financing and 40 years for permanent financing.

e. The required debt service is 1.25 to 1. Loan-to-value ratio will be considered. The authority may, in limited cases, change the required debt service ratio. Such decision will be made in the sole discretion of the authority.

f. Interest rates will be set by the authority, in its sole discretion.

g. Except as permitted in the case of loans made pursuant to rule 265—3.8(16), loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.

h. Construction financing may be awarded to projects under the program.

i. Borrowers must covenant to observe certain compliance measures, including a recorded agreement to ensure long-term affordability.

j. A title guaranty certificate from the authority's title guaranty division is required on all loans, unless specifically waived by the authority.

k. A local contributing effort in an amount of up to 1 percent of the proposed loan may be required by the authority, if feasible, for loans made under division I of this chapter. If a local contributing effort is required, evidence of such local contributing effort shall be presented to the authority.

l. The authority may require a change of management or general partner and may refer applicants to other financing options, such as tax-exempt bonds or tax credits, when appropriate.

m. FHA-insured loans may be available through the Multifamily Accelerated Processing (MAP) of HUD, if the authority is an approved MAP lender at the time of the loan closing. The authority may require or suggest such a MAP loan for any and all projects applying for assistance. In addition, the authority may participate in the HUD Risk-Sharing Program and may suggest or require such a loan for any and all projects applying for assistance.

n. Grant funds may be available, in the sole discretion of the authority, if the authority determines that such funds are necessary for the continued financial viability of the project.

o. Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

3.5(2) Loan fees are as follows:

a. Commitment fee (construction period) - 1.0 percent of total development costs.

b. Commitment fee (permanent loan) - 2.0 percent of loan amount.

c. Inspection fee - 0.5 percent of loan amount.

d. Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

[**ARC 8078B**, IAB 8/26/09, effective 8/7/09; **ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.6(16) Multifamily loan program for preservation of affordable housing. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects must have been developed using at least one of the following: low-income housing tax credits (LIHTC); state or local HOME funding; tax-exempt bonds; a HUD or USDA Rural Development program (i.e., Section 515); authority HAF funds; or funds of the former Iowa housing corporation (IHC).

2. Units must at a minimum be affordable to tenants with incomes at or below 80 percent of area median income (AMI), and, in most cases, must be affordable to tenants with incomes at or below 50 percent AMI. Mixed income projects will be considered.

3. Projects must have at least five units.

265—3.7(16) Multifamily loan program for low-income housing tax credits. Projects allocated either 4 percent or 9 percent tax credits that have not yet started construction or have not obtained permanent financing are eligible for loans under this category.

265—3.8(16) Multifamily loan program for workforce housing loan assistance. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

3.8(1) A loan made under this category (the "primary loan") shall be made to an Iowa city or county for the purpose of being reloaned by the borrower in order to provide financial assistance to an identified project to rehabilitate or create new rental workforce or affordable multifamily housing within the borrower's jurisdiction (the "secondary loan"). The authority may restrict the use of funds to a designated portion of the borrower's jurisdiction.

3.8(2) At least 50 percent of the housing units rehabilitated or created with the proceeds of the secondary loan shall be restricted to families whose annual income at the time of leasing is at or below 120 percent of the area median income, unless the authority agrees otherwise.

3.8(3) The primary loan may be unsecured, but it shall constitute a general obligation of the borrower.

3.8(4) Preference under this category shall be given to cities and counties that can document an increased need for housing as the result of new job creation within their jurisdiction.

3.8(5) The borrower shall use funds received in repayment of the secondary loan first to make the scheduled principal and interest payments on the primary loan. Any secondary loan payments remaining after all then-due scheduled payments on the primary loan have been repaid may be reloaned by the borrower on the same basis as if such secondary loan payment amounts were proceeds of the primary loan.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.9(16) Multifamily loan program for substantial rehabilitation of nonrestricted projects. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects that currently have no affordability restrictions (e.g., Section 8 project based, USDA 515, LIHTC) are eligible for assistance.
2. Projects must need and sponsors must agree to complete rehabilitation of at least $6,000 per unit in hard construction costs.
3. Sponsors must agree that at least 40 percent of the units shall have rents at or below the applicable area FMR (fair market rents as determined by HUD).
4. Projects must have at least five units.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.10(16) Authority analysis of applications. Authority staff will analyze and underwrite each potential project, and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that because of the complex nature of each transaction, and the particular sets of circumstances attributable to each particular application/transaction, that the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program, as such may be revised from time to time.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.11(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.12(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10]

265—3.13 to **3.19** Reserved.

DIVISION II
PREDEVELOPMENT LOAN FUND

265—3.20(16) Purpose. Through its predevelopment loan fund (fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost predevelopment loans for which reasonable financing through traditional lenders or other government financing is not readily available.

265—3.21(16) Available funds. The authority will publicize the approximate amount of funds available under this fund on the authority's Web site at www.iowafinanceauthority.gov.

265—3.22(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this fund.

265—3.23(16) Application procedure. Applications for assistance under this fund must be made on forms and in the manner provided by the authority. Inquiries with respect to this fund should be made to those persons identified on the authority's Web site as contacts for the program and the fund. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

265—3.24(16) Fund guidelines. Any sponsor is eligible to apply for assistance from the fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

3.24(1) Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

3.24(2) The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: architect services, engineering services, attorney's fees, accounting fees, environmental consultants and reports, finance and development consultants, tax credit consultants, market studies, survey fees, appraisal costs, and such other similar activities as may be determined by the authority from time to time to fall within the guidelines and purposes established for loans under the fund.

3.24(3) Assistance will be provided upon the following terms and conditions:

a. Generally, the minimum loan amount is $2,500, and the maximum loan amount is $25,000.

b. The loan will be due on the earlier of (1) 12 months from the date it is issued or (2) the closing of the authority's first mortgage loan for the project under the program. The authority may extend the loan term as it deems necessary.

c. Principal and interest payments will be due at loan maturity and may be paid from the proceeds of a loan under the program.

d. Interest rates will be set by the authority, in its sole discretion.

e. Recipients must execute such documents and instruments, and must provide such information, certificates and other items, as determined necessary by the authority, in its sole discretion, in connection with any assistance.

265—3.25(16) Authority analysis of applications. Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this fund.

265—3.26(16) Discretion of authority board. The authority's board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—3.27(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

265—3.28 to **3.30** Reserved.

DIVISION III
GAP FINANCING FUND

265—3.31(16) Purpose. Through its gap financing fund (gap fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost gap loans for which reasonable financing through traditional lenders or other government financing is not readily available.

265—3.32(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this gap fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this gap fund.

265—3.33(16) Application procedure. Applications for assistance under this gap fund must be made on forms and in the manner provided by the authority. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve affordable housing in the state.

265—3.34(16) Fund guidelines. Any sponsor is eligible to apply for assistance from the gap fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

3.34(1) Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

3.34(2) The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: acquisition costs, operating and replacement reserves, insurance, closing costs, and such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for loans under the gap fund.

3.34(3) Assistance will be provided upon the following terms and conditions:

a. The maximum loan amount cannot exceed 50 percent of the authority's first mortgage loan and second mortgage loan, if any, under the program.

b. The loan term shall not exceed 40 years.

c. Principal and interest payments shall be due monthly.

d. Interest rates will be set by the authority, in its sole discretion, as close to market as the financial capacity of the project will allow.

e. Loans shall be secured by a subordinate mortgage.

f. Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

3.34(4) Loan fees are as follows:

a. Commitment fee - 1.0 percent of loan amount.

b. Origination fee - 2.0 percent of loan amount.

c. Inspection fee - 0.5 percent of loan amount.

d. Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

265—3.35(16) Authority analysis of applications. Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this gap fund.

265—3.36(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—3.37(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and accordingly, not advance any funds for such project.

265—3.38 to **3.40** Reserved.

These rules are intended to implement Iowa Code sections 16.5(17), 16.18(1) and 16.18(2).

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TITLE I
GENERAL INFORMATION—
DEPARTMENT OPERATIONS

CHAPTER 1
ORGANIZATION AND OPERATION

1.1(17A,256) State board of education
1.2(17A,256) Student member of state board of education
1.3(17A,256) Director of education
1.4(17A,256) Department of education

CHAPTER 2
AGENCY PROCEDURE FOR RULE MAKING AND PETITIONS FOR RULE MAKING
(Uniform Rules)

2.1(17A) Applicability
2.2(17A) Advice on possible rules before notice of proposed rule adoption
2.3(17A) Public rule-making docket
2.4(17A) Notice of proposed rule making
2.5(17A) Public participation
2.6(17A) Regulatory analysis
2.7(17A,25B) Fiscal impact statement
2.8(17A) Time and manner of rule adoption
2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
2.10(17A) Exemptions from public rule-making procedures
2.11(17A) Concise statement of reasons
2.12(17A) Contents, style, and form of rule
2.13(17A) Agency rule-making record
2.14(17A) Filing of rules
2.15(17A) Effectiveness of rules prior to publication
2.16(17A) General statements of policy
2.17(17A) Review by agency of rules
2.18(17A) Petition for rule making
2.19(17A) Inquiries

CHAPTER 3
DECLARATORY ORDERS
(Uniform Rules)

3.1(17A) Petition for declaratory order
3.2(17A) Notice of petition
3.3(17A) Intervention
3.4(17A) Briefs
3.5(17A) Inquiries
3.6(17A) Service and filing of petitions and other papers
3.7(17A) Consideration
3.8(17A) Action on petition
3.9(17A) Refusal to issue order
3.10(17A) Contents of declaratory order—effective date
3.11(17A) Copies of orders
3.12(17A) Effect of a declaratory order

CHAPTER 4
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

4.1(17A,ExecOrd11) Definitions
4.2(17A,ExecOrd11) Scope of chapter
4.3(17A,ExecOrd11) Applicability of chapter
4.4(17A,ExecOrd11) Criteria for waiver
4.5(17A,ExecOrd11) Filing of petition
4.6(17A,ExecOrd11) Content of petition
4.7(17A,ExecOrd11) Additional information
4.8(17A,ExecOrd 11) Notice
4.9(17A,ExecOrd11) Hearing procedures
4.10(17A,ExecOrd11) Ruling
4.11(17A,ExecOrd11) Public availability
4.12(17A,ExecOrd11) Summary reports
4.13(17A,ExecOrd11) Cancellation
4.14(17A,ExecOrd11) Violations
4.15(17A,ExecOrd11) Defense
4.16(17A,ExecOrd11) Judicial review
4.17(17A,ExecOrd11) Exception

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

5.1(256) Definitions
5.3(256) Requests for access to records
5.6(256) Procedure by which additions, dissents, or objections may be entered into certain records
5.9(256) Disclosures without the consent of the subject
5.10(256) Routine use
5.11(256) Consensual disclosure of confidential records
5.12(256) Release to a subject
5.13(256) Availability of records
5.14(256) Personally identifiable information
5.15(256) Other groups of records
5.16(256) Applicability

CHAPTER 6
APPEAL PROCEDURES

6.1(290) Scope of appeal
6.2(256,290,17A) Definitions
6.3(290,17A) Manner of appeal
6.4(17A) Continuances
6.5(17A) Intervention
6.6(17A) Motions
6.7(17A) Disqualification
6.8(290) Subpoena of witnesses and costs
6.9(17A) Discovery
6.10(17A) Consolidation—severance
6.11(17A) Waiver of procedures
6.12(17A) Appeal hearing
6.13 Reserved
6.14(17A) Ex parte communication
6.15(17A) Record

6.16(17A) Recording costs
6.17(290,17A) Decision and review
6.18(290) Finality of decision
6.19(17A) Default
6.20(17A) Application for rehearing of final decision
6.21(17A) Rehearing
6.22(17A) Emergency adjudicative proceedings

CHAPTER 7
CRITERIA FOR GRANTS

7.1(256,17A) Purpose
7.2(256,17A) Definitions
7.3(256,17A) Requirements
7.4(256,17A) Review process
7.5(290,17A) Appeal of grant denial or termination

CHAPTERS 8 to 10
Reserved

TITLE II
ACCREDITED SCHOOLS AND SCHOOL DISTRICTS

CHAPTER 11
UNSAFE SCHOOL CHOICE OPTION

11.1(PL107-110) Purpose
11.2(PL107-110) Definitions
11.3(PL107-110) Whole school option
11.4(PL107-110) Individual student option
11.5(PL107-110) District reporting

CHAPTER 12
GENERAL ACCREDITATION STANDARDS

DIVISION I
GENERAL STANDARDS

12.1(256) General standards

DIVISION II
DEFINITIONS

12.2(256) Definitions

DIVISION III
ADMINISTRATION

12.3(256) Administration

DIVISION IV
SCHOOL PERSONNEL

12.4(256) School personnel

DIVISION V
EDUCATION PROGRAM

12.5(256) Education program

DIVISION VI
ACTIVITY PROGRAM

12.6(256) Activity program

DIVISION VII
STAFF DEVELOPMENT

12.7(256,284,284A) Professional development

DIVISION VIII
ACCOUNTABILITY

12.8(256) Accountability for student achievement

DIVISION IX
EXEMPTION REQUEST PROCESS

12.9(256) General accreditation standards exemption request

CHAPTERS 13 and 14
Reserved

CHAPTER 15
USE OF TELECOMMUNICATIONS FOR INSTRUCTION BY SCHOOLS

15.1(256) Purpose
15.2(256) Definitions
15.3(256) lnteractivity
15.4(256) Course eligibility
15.5(256) Teacher preparation and accessibility
15.6(256) School responsibilities

CHAPTER 16
STATEWIDE VOLUNTARY PRESCHOOL PROGRAM

16.1(256C) Purpose
16.2(256C) Definitions
16.3(256C) Preschool program standards
16.4(256C) Collaboration requirements
16.5(256C) Applications for funding
16.6(256C) Application process
16.7(256C) Award contracts
16.8(256C) Contract termination

16.9(256C) Criteria for applications for funding
16.10(256C) Appeal of application denial or termination
16.11(256C) Finance
16.12(256C) Transportation
16.13(256C) Accountability requirements
16.14(256C) Monitoring
16.15(256C) Open enrollment not applicable

CHAPTER 17
OPEN ENROLLMENT

17.1(282) Intent and purpose
17.2(282) Definitions
17.3(282) Application process
17.4(282) Filing after the March 1 deadline—good cause
17.5(282) Filing after the March 1 deadline—harassment or serious health condition
17.6(282) Restrictions to open enrollment requests
17.7(282) Open enrollment for kindergarten
17.8(282) Requirements applicable to parents/guardians and students
17.9(282) Transportation
17.10(282) Method of finance
17.11(282) Special education students
17.12(282) Laboratory school provisions
17.13(282) Applicability
17.14(282) Voluntary diversity plans or court-ordered desegregation plans

CHAPTER 18
SCHOOL FEES

18.1(256) Policy
18.2(256) Fee policy
18.3(256) Eligibility for waiver, partial waiver or temporary waiver of student fees
18.4(256) Fees covered
18.5(256) Effective date

CHAPTERS 19 and 20
Reserved

TITLE III
COMMUNITY COLLEGES

CHAPTER 21
COMMUNITY COLLEGES

DIVISION I
APPROVAL STANDARDS

21.1(260C) Definitions
21.2(260C) Administration
21.3 Reserved
21.4(260C) Curriculum and evaluation
21.5(260C) Library or learning resource center
21.6(260C) Student services
21.7(260C) Laboratories, equipment and supplies
21.8(260C) Physical plant
21.9(260C) Nonreimbursable facilities
21.10 to 21.19 Reserved

DIVISION II
COMMUNITY COLLEGE ENERGY APPROPRIATIONS

21.20 to 21.29 Reserved

DIVISION III
INSTRUCTIONAL COURSE FOR DRINKING DRIVERS

21.30(321J) Purpose
21.31(321J) Course
21.32(321J) Tuition fee established
21.33(321J) Administrative fee established
21.34 Reserved

DIVISION IV
JOBS NOW CAPITALS ACCOUNT

21.35 to 21.44 Reserved

DIVISION V
STATE COMMUNITY COLLEGE FUNDING PLAN

21.45(260C) Purpose

DIVISION VI
INTERCOLLEGIATE ATHLETIC COMPETITION

21.46 to 21.56 Reserved

DIVISION VII
QUALITY INSTRUCTIONAL CENTER INITIATIVE

21.57 to 21.63 Reserved

DIVISION VIII
PROGRAM AND ADMINISTRATIVE SHARING INITIATIVE

21.64 to 21.71 Reserved

DIVISION IX
APPRENTICESHIP PROGRAM

21.72(260C) Purpose
21.73(260C) Definitions
21.74(260C) Apprenticeship programs

DIVISION X
MISCELLANEOUS PROVISIONS

21.75(260C,82GA,SF358) Used motor vehicle dealer education program

CHAPTER 22
SENIOR YEAR PLUS PROGRAM

DIVISION I
GENERAL PROVISIONS

22.1(261E) Scope
22.2(261E) Student eligibility
22.3(261E) Teacher eligibility, responsibilities
22.4(261E) Institutional eligibility, responsibilities
22.5 Reserved

DIVISION II
DEFINITIONS

22.6(261E) Definitions

DIVISION III
ADVANCED PLACEMENT PROGRAM

22.7(261E) School district obligations
22.8(261E) Obligations regarding registration for advanced placement examinations
22.9 and 22.10 Reserved

DIVISION IV
CONCURRENT ENROLLMENT PROGRAM

22.11(261E) Applicability
22.12 and 22.13 Reserved

DIVISION V
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

22.14(261E) Availability
22.15(261E) Notification
22.16(261E) Student eligibility
22.17(261E) Eligible postsecondary courses
22.18(261E) Application process
22.19(261E) Credits
22.20(261E) Transportation
22.21(261E) Tuition payments
22.22(261E) Tuition reimbursements and adjustments
22.23 Reserved

DIVISION VI
CAREER ACADEMIES

22.24(261E) Career academies
22.25 Reserved

DIVISION VII
REGIONAL ACADEMIES

22.26(261E) Regional academies
22.27 Reserved

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

22.28(261E) Internet-based coursework
22.29(261E) ICN-based coursework

CHAPTER 23
ADULT EDUCATION

23.1(260C) Planning process
23.2(260C) Final plan

CHAPTER 24
COMMUNITY COLLEGE ACCREDITATION

24.1(260C) Purpose
24.2(260C) Scope
24.3(260C) Definitions
24.4(260C) Accreditation components and criteria—Higher Learning Commission
24.5(260C) Accreditation components and criteria—additional state standards
24.6(260C) Accreditation process

CHAPTER 25
Reserved

TITLE IV
DRIVER AND SAFETY EDUCATION

CHAPTERS 26 to 30
Reserved

TITLE V
NONTRADITIONAL STUDENTS

CHAPTER 31
COMPETENT PRIVATE INSTRUCTION AND DUAL ENROLLMENT

31.1(299,299A) Purpose
31.2(299) Reports as to competent private instruction
31.3(299,299A) Duties of privately retained licensed practitioners
31.4(299,299A) Duties of licensed practitioners, home school assistance program
31.5(299A) School district duties related to competent private instruction
31.6(299A) Dual enrollment
31.7(299) Open enrollment
31.8(299A) Baseline evaluation and annual assessment
31.9(299A) Reporting assessment results
31.10(299A) Special education students

CHAPTER 32
HIGH SCHOOL EQUIVALENCY DIPLOMA

32.1(259A) Test
32.2(259A) By whom administered
32.3(259A) Minimum score
32.4(259A) Date of test
32.5(259A) Retest
32.6(259A) Application fee

CHAPTER 33
EDUCATING THE HOMELESS

33.1(256) Purpose
33.2(256) Definitions
33.3(256) Responsibilities of the board of directors
33.4(256) School records; student transfers
33.5(256) Immunization requirements
33.6(256) Waiver of fees and charges encouraged
33.7(256) Waiver of enrollment requirements encouraged; placement
33.8(256) Residency of homeless child or youth
33.9(256) Dispute resolution
33.10(256) Transportation of homeless children and youth
33.11(256) School services

CHAPTER 34
FUNDING FOR CHILDREN RESIDING IN STATE INSTITUTIONS
OR MENTAL HEALTH INSTITUTES

34.1(218) Scope
34.2(218) Definitions
34.3(218) General principles
34.4(218) Notification
34.5(218) Program submission and approval
34.6(218) Budget submission and approval
34.7(218) Payments
34.8(218) Payments to the AEA
34.9(218) Contracting for services
34.10(218) Accounting for average daily attendance
34.11(218) Accounting for actual program costs

34.12(218) Audit
34.13(218) Hold-harmless provision
34.14(218,256B,34CFR300) AEA services
34.15(218,233A,261C) Postsecondary credit courses

CHAPTER 35
Reserved

TITLE VI
INTERSCHOLASTIC COMPETITION

CHAPTER 36
EXTRACURRICULAR INTERSCHOLASTIC COMPETITION

36.1(280) Definitions
36.2(280) Registered organizations
36.3(280) Filings by organizations
36.4(280) Executive board
36.5(280) Federation membership
36.6(280) Salaries
36.7(280) Expenses
36.8(280) Financial report
36.9(280) Bond
36.10(280) Audit
36.11(280) Examinations by auditors
36.12(280) Access to records
36.13(280) Appearance before state board
36.14(280) Interscholastic athletics
36.15(280) Eligibility requirements
36.16(280) Executive board review
36.17(280) Appeals to director
36.18(280) Organization policies
36.19(280) Eligibility in situations of district organization change
36.20(280) Cooperative student participation

CHAPTER 37
EXTRACURRICULAR ATHLETIC ACTIVITY
CONFERENCE FOR MEMBER SCHOOLS

37.1(280) Policy and purpose
37.2(280) Initial responsibility
37.3(280) Complaint to the director, department of education
37.4(280) Mediation
37.5(280) Resolution or recommendation of the mediation team
37.6(280) Decision
37.7(280) Effective date of the decision

CHAPTERS 38 to 40
Reserved

TITLE VII
SPECIAL EDUCATION

CHAPTER 41
SPECIAL EDUCATION

DIVISION I
PURPOSE AND APPLICABILITY

41.1(256B,34CFR300) Purposes
41.2(256B,34CFR300) Applicability of this chapter

DIVISION II
DEFINITIONS

41.3(256B,34CFR300) Act
41.4(256B,273) Area education agency
41.5(256B,34CFR300) Assistive technology device
41.6(256B,34CFR300) Assistive technology service
41.7(256B,34CFR300) Charter school
41.8(256B,34CFR300) Child with a disability
41.9(256B,34CFR300) Consent
41.10(256B,34CFR300) Core academic subjects
41.11(256B,34CFR300) Day; business day; school day
41.12(256B,34CFR300) Educational service agency
41.13(256B,34CFR300) Elementary school
41.14(256B,34CFR300) Equipment
41.15(256B,34CFR300) Evaluation
41.16(256B,34CFR300) Excess costs
41.17(256B,34CFR300) Free appropriate public education
41.18(256B,34CFR300) Highly qualified special education teachers
41.19(256B,34CFR300) Homeless children
41.20(256B,34CFR300) Include
41.21(256B,34CFR300) Indian and Indian tribe
41.22(256B,34CFR300) Individualized education program
41.23(256B,34CFR300) Individualized education program team
41.24(256B,34CFR300) Individualized family service plan
41.25(256B,34CFR300) Infant or toddler with a disability
41.26(256B,34CFR300) Institution of higher education
41.27(256B,34CFR300) Limited English proficient
41.28(256B,34CFR300) Local educational agency
41.29(256B,34CFR300) Native language
41.30(256B,34CFR300) Parent
41.31(256B,34CFR300) Parent training and information center
41.32(256B,34CFR300) Personally identifiable
41.33(256B,34CFR300) Public agency; nonpublic agency; agency
41.34(256B,34CFR300) Related services
41.35(34CFR300) Scientifically based research
41.36(256B,34CFR300) Secondary school
41.37(34CFR300) Services plan
41.38(34CFR300) Secretary
41.39(256B,34CFR300) Special education
41.40(34CFR300) State
41.41(256B,34CFR300) State educational agency
41.42(256B,34CFR300) Supplementary aids and services
41.43(256B,34CFR300) Transition services

41.44(34CFR300) Universal design
41.45(256B,34CFR300) Ward of the state
41.46 to 41.49 Reserved
41.50(256B,34CFR300) Other definitions associated with identification of eligible individuals
41.51(256B,34CFR300) Other definitions applicable to this chapter
41.52 to 41.99 Reserved

DIVISION III
RULES APPLICABLE TO THE STATE AND TO ALL AGENCIES

41.100(256B,34CFR300) Eligibility for assistance
41.101(256B,34CFR300) Free appropriate public education (FAPE)
41.102(256B,34CFR300) Limitation—exceptions to FAPE for certain ages
41.103(256B,34CFR300) FAPE—methods and payments
41.104(256B,34CFR300) Residential placement
41.105(256B,34CFR300) Assistive technology
41.106(256B,34CFR300) Extended school year services
41.107(256B,34CFR300) Nonacademic services
41.108(256B,34CFR300) Physical education
41.109(256B,34CFR300) Full educational opportunity goal (FEOG)
41.110(256B,34CFR300) Program options
41.111(256B,34CFR300) Child find
41.112(256B,34CFR300) Individualized education programs (IEPs)
41.113(256B,34CFR300) Routine checking of hearing aids and external components of surgically implanted medical devices
41.114(256B,34CFR300) Least restrictive environment (LRE)
41.115(256B,34CFR300) Continuum of alternative services and placements
41.116(256B,34CFR300) Placements
41.117(256B,34CFR300) Nonacademic settings
41.118(256B,34CFR300) Children in public or private institutions
41.119(256B,34CFR300) Technical assistance and training activities
41.120(256B,34CFR300) Monitoring activities
41.121(256B,34CFR300) Procedural safeguards
41.122(256B,34CFR300) Evaluation
41.123(256B,34CFR300) Confidentiality of personally identifiable information
41.124(256B,34CFR300) Transition of children from the Part C program to preschool programs
41.125 to 41.128 Reserved
41.129(256B,34CFR300) Responsibility regarding children in private schools
41.130(256,256B,34CFR300) Definition of parentally placed private school children with disabilities
41.131(256,256B,34CFR300) Child find for parentally placed private school children with disabilities
41.132(256,256B,34CFR300) Provision of services for parentally placed private school children with disabilities: basic requirement
41.133(256,256B,34CFR300) Expenditures
41.134(256,256B,34CFR300) Consultation
41.135(256,256B,34CFR300) Written affirmation
41.136(256,256B,34CFR300) Compliance
41.137(256,256B,34CFR300) Equitable services determined
41.138(256,256B,34CFR300) Equitable services provided
41.139(256,256B,34CFR300) Location of services and transportation
41.140(256,256B,34CFR300) Due process complaints and state complaints
41.141(256,256B,34CFR300) Requirement that funds not benefit a private school
41.142(256,256B,34CFR300) Use of personnel
41.143(256,256B,34CFR300) Separate classes prohibited
41.144(256,256B,34CFR300) Property, equipment, and supplies

41.145(256B,34CFR300) Applicability of rules 281—41.146(256B,34CFR300) to 281—41.147(256B,34CFR300)
41.146(256B,34CFR300) Responsibility of department
41.147(256B,34CFR300) Implementation by department
41.148(256B,34CFR300) Placement of children by parents when FAPE is at issue
41.149(256B,34CFR300) SEA responsibility for general supervision
41.150 Reserved
41.151(256B,34CFR300) Adoption of state complaint procedures
41.152(256B,34CFR300) Minimum state complaint procedures
41.153(256B,34CFR300) Filing a complaint
41.154(256B,34CFR300) Methods of ensuring services
41.155(256B,34CFR300) Hearings relating to AEA or LEA eligibility
41.156(256B,34CFR300) Personnel qualifications
41.157 to 41.161 Reserved
41.162(256B,34CFR300) Supplementation of state, local, and other federal funds
41.163(256B,34CFR300) Maintenance of state financial support
41.164 Reserved
41.165(256B,34CFR300) Public participation
41.166(256B,34CFR300) Rule of construction
41.167(256B,34CFR300) State advisory panel
41.168(256B,34CFR300) Advisory panel membership
41.169(256B,34CFR300) Advisory panel duties
41.170(256B,34CFR300) Suspension and expulsion rates
41.171 Reserved
41.172(256B,34CFR300) Access to instructional materials
41.173(256B,34CFR300) Overidentification and disproportionality
41.174(256B,34CFR300) Prohibition on mandatory medication
41.175 Reserved
41.176(256B) Special school provisions
41.177(256B) Facilities
41.178(256B) Materials, equipment and assistive technology
41.179 to 41.185 Reserved
41.186(256B,34CFR300) Assistance under other federal programs
41.187(256B) Research, innovation, and improvement
41.188 to 41.199 Reserved

DIVISION IV
LEA AND AEA ELIGIBILITY, IN GENERAL

41.200(256B,34CFR300) Condition of assistance
41.201(256B,34CFR300) Consistency with state policies
41.202(256B,34CFR300) Use of amounts
41.203(256B,34CFR300) Maintenance of effort
41.204(256B,34CFR300) Exception to maintenance of effort
41.205(256B,34CFR300) Adjustment to local fiscal efforts in certain fiscal years
41.206(256B,34CFR300) Schoolwide programs under Title I of the ESEA
41.207(256B,34CFR300) Personnel development
41.208(256B,34CFR300) Permissive use of funds
41.209(256B,34CFR300) Treatment of charter schools and their students
41.210(256B,34CFR300) Purchase of instructional materials
41.211(256B,34CFR300) Information for department
41.212(256B,34CFR300) Public information
41.213(256B,34CFR300) Records regarding migratory children with disabilities
41.214 to 41.219 Reserved

41.220(256B,34CFR300) Exception for prior local plans
41.221(256B,34CFR300) Notification of AEA or LEA or state agency in case of ineligibility
41.222(256B,34CFR300) AEA or LEA and state agency compliance
41.223(256B,34CFR300) Joint establishment of eligibility
41.224(256B,34CFR300) Requirements for jointly establishing eligibility
41.225 Reserved
41.226(256B,34CFR300) Early intervening services
41.227 Reserved
41.228(256B,34CFR300) State agency eligibility
41.229(256B,34CFR300) Disciplinary information
41.230(256B,34CFR300) SEA flexibility
41.231 to 41.299 Reserved

DIVISION V
EVALUATION, ELIGIBILITY, IEPs, AND PLACEMENT DECISIONS

41.300(256B,34CFR300) Parental consent and participation
41.301(256B,34CFR300) Full and individual initial evaluations
41.302(256B,34CFR300) Screening for instructional purposes is not evaluation
41.303(256B,34CFR300) Reevaluations
41.304(256B,34CFR300) Evaluation procedures
41.305(256B,34CFR300) Additional requirements for evaluations and reevaluations
41.306(256B,34CFR300) Determination of eligibility
41.307(256B,34CFR300) Specific learning disabilities
41.308(256B,34CFR300) Additional group members
41.309(256B,34CFR300) Determining the existence of a specific learning disability
41.310(256B,34CFR300) Observation
41.311(256B,34CFR300) Specific documentation for the eligibility determination
41.312(256B,34CFR300) General education interventions
41.313(256B,34CFR300) Systematic problem-solving process
41.314(256B,34CFR300) Progress monitoring and data collection
41.315 to 41.319 Reserved
41.320(256B,34CFR300) Definition of individualized education program
41.321(256B,34CFR300) IEP team
41.322(256B,34CFR300) Parent participation
41.323(256B,34CFR300) When IEPs must be in effect
41.324(256B,34CFR300) Development, review, and revision of IEP
41.325(256B,34CFR300) Private school placements by public agencies
41.326(256B,34CFR300) Other rules concerning IEPs
41.327(256B,34CFR300) Educational placements
41.328(256B,34CFR300) Alternative means of meeting participation
41.329 to 41.399 Reserved

DIVISION VI
ADDITIONAL RULES RELATED TO AEAs, LEAs, AND SPECIAL EDUCATION

41.400(256B,34CFR300) Shared responsibility
41.401(256B,34CFR300) Licensure (certification)
41.402(256B,273,34CFR300) Authorized personnel
41.403(256B) Paraprofessionals
41.404(256B) Policies and procedures required of all public agencies
41.405(256B) Special health services
41.406(256B) Additional requirements of LEAs
41.407(256B,273,34CFR300) Additional requirements of AEAs
41.408(256B,273,34CFR300) Instructional services
41.409(256B,34CFR300) Support services

41.410(256B,34CFR300) Itinerant services
41.411(256B,34CFR300) Related services, supplementary aids and services
41.412(256B,34CFR300) Transportation
41.413(256,256B,34CFR300) Additional rules relating to accredited nonpublic schools
41.414 to 41.499 Reserved

DIVISION VII
PROCEDURAL SAFEGUARDS

41.500(256B,34CFR300) Responsibility of SEA and other public agencies
41.501(256B,34CFR300) Opportunity to examine records; parent participation in meetings
41.502(256B,34CFR300) Independent educational evaluation
41.503(256B,34CFR300) Prior notice by the public agency; content of notice
41.504(256B,34CFR300) Procedural safeguards notice
41.505(256B,34CFR300) Electronic mail
41.506(256B,34CFR300) Mediation
41.507(256B,34CFR300) Filing a due process complaint
41.508(256B,34CFR300) Due process complaint
41.509(256B,34CFR300) Model forms
41.510(256B,34CFR300) Resolution process
41.511(256B,34CFR300) Impartial due process hearing
41.512(256B,34CFR300) Hearing rights
41.513(256B,34CFR300) Hearing decisions
41.514(256B,34CFR300) Finality of decision
41.515(256B,34CFR300) Timelines and convenience of hearings
41.516(256B,34CFR300) Civil action
41.517(256B,34CFR300) Attorneys' fees
41.518(256B,34CFR300) Child's status during proceedings
41.519(256B,34CFR300) Surrogate parents
41.520(256B,34CFR300) Transfer of parental rights at age of majority
41.521 to 41.529 Reserved
41.530(256B,34CFR300) Authority of school personnel
41.531(256B,34CFR300) Determination of setting
41.532(256B,34CFR300) Appeal
41.533(256B,34CFR300) Placement during appeals and preappeal mediations
41.534(256B,34CFR300) Protections for children not determined eligible for special education and related services
41.535(256B,34CFR300) Referral to and action by law enforcement and judicial authorities
41.536(256B,34CFR300) Change of placement because of disciplinary removals
41.537(256B,34CFR300) State enforcement mechanisms
41.538 to 41.599 Reserved

DIVISION VIII
MONITORING, ENFORCEMENT, CONFIDENTIALITY, AND PROGRAM INFORMATION

41.600(256B,34CFR300) State monitoring and enforcement
41.601(256B,34CFR300) State performance plans and data collection
41.602(256B,34CFR300) State use of targets and reporting
41.603(256B,34CFR300) Department review and determination regarding public agency performance
41.604(256B,34CFR300) Enforcement
41.605(256B,34CFR300) Withholding funds
41.606(256B,34CFR300) Public attention
41.607 Reserved
41.608(256B,34CFR300) State enforcement
41.609(256B,34CFR300) State consideration of other state or federal laws
41.610(256B,34CFR300) Confidentiality

41.611(256B,34CFR300) Definitions
41.612(256B,34CFR300) Notice to parents
41.613(256B,34CFR300) Access rights
41.614(256B,34CFR300) Record of access
41.615(256B,34CFR300) Records on more than one child
41.616(256B,34CFR300) List of types and locations of information
41.617(256B,34CFR300) Fees
41.618(256B,34CFR300) Amendment of records at parent's request
41.619(256B,34CFR300) Opportunity for a hearing
41.620(256B,34CFR300) Result of hearing
41.621(256B,34CFR300) Hearing procedures
41.622(256B,34CFR300) Consent
41.623(256B,34CFR300) Safeguards
41.624(256B,34CFR300) Destruction of information
41.625(256B,34CFR300) Children's rights
41.626(256B,34CFR300) Enforcement
41.627 to 41.639 Reserved
41.640(256B,34CFR300) Annual report of children served—report requirement
41.641(256B,34CFR300) Annual report of children served—information required in the report
41.642(256B,34CFR300) Data reporting
41.643(256B,34CFR300) Annual report of children served—certification
41.644(256B,34CFR300) Annual report of children served—criteria for counting children
41.645(256B,34CFR300) Annual report of children served—other responsibilities of the SEA
41.646(256B,34CFR300) Disproportionality
41.647 to 41.699 Reserved

DIVISION IX
ALLOCATIONS BY THE SECRETARY TO THE STATE

41.700 to 41.703 Reserved
41.704(256B,34CFR300) State-level activities
41.705(256B,34CFR300) Subgrants to AEAs
41.706 to 41.799 Reserved

DIVISION X
PRESCHOOL GRANTS FOR CHILDREN WITH DISABILITIES

41.800(256B,34CFR300) General rule
41.801 and 41.802 Reserved
41.803(256B,34CFR300) Definition of state
41.804(256B,34CFR300) Eligibility
41.805 Reserved
41.806(256B,34CFR300) Eligibility for financial assistance
41.807 to 41.811 Reserved
41.812(256B,34CFR300) Reservation for state activities
41.813(256B,34CFR300) State administration
41.814(256B,34CFR300) Other state-level activities
41.815(256B,34CFR300) Subgrants to AEAs
41.816(256B,34CFR300) Allocations to AEAs
41.817(256B,34CFR300) Reallocation of AEA funds
41.818(256B,34CFR300) Part C of the Act inapplicable
41.819 to 41.899 Reserved

DIVISION XI
ADDITIONAL RULES CONCERNING FINANCE AND PUBLIC ACCOUNTABILITY

41.900(256B,282) Scope
41.901(256B,282) Records and reports
41.902(256B,282) Audit
41.903(256B,282) Contractual agreements
41.904(256B) Research and demonstration projects and models for special education program development
41.905(256B,273) Additional special education
41.906(256B,273,282) Extended school year services
41.907(256B,282,34CFR300,303) Program costs
41.908(256B,282) Accountability
41.909 to 41.999 Reserved

DIVISION XII
PRACTICE BEFORE MEDIATORS AND ADMINISTRATIVE LAW JUDGES

41.1000(17A,256B,290) Applicability
41.1001(17A,256B,290) Definitions
41.1002(256B,34CFR300) Special education preappeal conference
41.1003(17A,256B) Procedures concerning due process complaints
41.1004(17A,256B) Participants in the hearing
41.1005(17A,256B) Convening the hearing
41.1006(17A,256B) Stipulated record hearing
41.1007(17A,256B) Evidentiary hearing
41.1008(17A,256B) Mixed evidentiary and stipulated record hearing
41.1009(17A,256B) Witnesses
41.1010(17A,256B) Rules of evidence
41.1011(17A,256B) Communications
41.1012(17A,256B) Record
41.1013(17A,256B) Decision and review
41.1014(17A,256B) Finality of decision
41.1015(256B,34CFR300) Disqualification of mediator
41.1016(17A) Correcting decisions of administrative law judges
41.1017 to 41.1099 Reserved

DIVISION XIII
ADDITIONAL RULES NECESSARY TO IMPLEMENT AND APPLY THIS CHAPTER

41.1100(256B,34CFR300) References to Code of Federal Regulations
41.1101(256B,34CFR300) Severability

CHAPTER 42
Reserved

TITLE VIII
SCHOOL TRANSPORTATION

CHAPTER 43
PUPIL TRANSPORTATION

DIVISION I
TRANSPORTATION ROUTES

43.1(285) Intra-area education agency routes
43.2(285) Interarea education agency routes

DIVISION II
PRIVATE CONTRACTORS

43.3(285)	Contract required
43.4(285)	Uniform charge
43.5(285)	Board must be party
43.6(285)	Contract with parents
43.7(285)	Vehicle requirements

DIVISION III
FINANCIAL RECORDS AND REPORTS

43.8(285)	Required charges
43.9(285)	Activity trips deducted

DIVISION IV
USE OF SCHOOL BUSES

43.10(285)	Permitted uses listed
43.11(285)	Teacher transportation

DIVISION V
THE BUS DRIVER

43.12(285)	Driver qualifications
43.13(285)	Stability factors
43.14(285)	Driver age
43.15(285)	Physical fitness
43.16	Reserved
43.17(285)	Insulin-dependent diabetics
43.18(285)	Authorization to be carried by driver
43.19 and 43.20	Reserved
43.21(285)	Experience, traffic law knowledge and driving record
43.22(321)	Fee collection and distribution of funds
43.23(285)	Application form
43.24(321)	Authorization denials and revocations

DIVISION VI
PURCHASE OF BUSES

43.25(285)	Local board procedure
43.26(285)	Financing
43.27 to 43.29	Reserved

DIVISION VII
MISCELLANEOUS REQUIREMENTS

43.30(285)	Semiannual inspection
43.31(285)	Maintenance record
43.32(285)	Drivers' schools
43.33(285)	Insurance
43.34(285)	Contract—privately owned buses
43.35(285)	Contract—district-owned buses
43.36(285)	Accident reports
43.37(285)	Railroad crossings
43.38(285)	Driver restrictions
43.39(285)	Civil defense projects
43.40(285)	Pupil instruction
43.41(285)	Trip inspections
43.42(285)	Loading and unloading areas
43.43(285)	Communication equipment

DIVISION VIII
COMMON CARRIERS

43.44(285) Standards for common carriers

CHAPTER 44
SCHOOL BUSES

44.1(285) Requirements for manufacturers
44.2(285) School bus—type classifications
44.3(285) School bus chassis
44.4(285) School bus body
44.5(285) Construction of vehicles for children with mobility problems
44.6(285) Family-type or multipurpose passenger vehicles
44.7(285) Repair, replacement of school bus body and chassis components following original equipment manufacture

CHAPTER 45
Reserved

TITLE IX
VOCATIONAL EDUCATION

CHAPTER 46
VOCATIONAL EDUCATION PROGRAMS

46.1(258) Standards for vocational education
46.2(258) Planning process
46.3(258) Public involvement and participation
46.4(258) Final plan and accountability report
46.5(258) Geographic area
46.6(258) Revised standards for vocational education
46.7(258) Definitions and descriptions of procedures

CHAPTER 47
CAREER ACADEMIES

47.1(260C) Definitions
47.2(260C) Career academy program of study

CHAPTERS 48 to 50
Reserved

TITLE X
VETERANS' TRAINING

CHAPTER 51
APPROVAL OF ON-THE-JOB TRAINING ESTABLISHMENTS
UNDER THE MONTGOMERY G.I. BILL

51.1(256) Application
51.2(256) Content and approval of application
51.3(256) Wage schedules

CHAPTER 52
APPROVAL OF EDUCATIONAL INSTITUTIONS
FOR THE EDUCATION AND TRAINING OF ELIGIBLE VETERANS
UNDER THE MONTGOMERY G.I. BILL

52.1(256) Colleges
52.2(256) High schools
52.3 Reserved

52.4(256) Schools of Bible or theology
52.5(256) Schools of nursing
52.6(256) Hospitals
52.7(256) Schools of cosmetology
52.8(256) Schools of barbering
52.9 Reserved
52.10(256) Schools of business
52.11(256) Trade schools
52.12(256) Correspondence schools
52.13(256) Successful operation on a continuous basis
52.14(256) Nonaccredited schools
52.15(256) Evaluation standards

CHAPTERS 53 to 55
Reserved

TITLE XI
VOCATIONAL REHABILITATION EDUCATION

CHAPTER 56
IOWA VOCATIONAL REHABILITATION SERVICES

DIVISION I
SCOPE AND GENERAL PRINCIPLES

56.1(259) Responsibility of division
56.2(259) Nondiscrimination

DIVISION II
DEFINITIONS

56.3(259) Definitions

DIVISION III
ELIGIBILITY

56.4(259) Individuals who are recipients of SSD/SSI
56.5(259) Eligibility for vocational rehabilitation services
56.6(259) Eligibility for specific services
56.7(259) Areas in which exceptions shall not be granted
56.8(259) Waiting list
56.9(259) Individuals who are blind
56.10(259) Students in high school
56.11(259) Establishment of financial need

DIVISION IV
CASE MANAGEMENT

56.12(259) Case finding and intake
56.13(259) Case diagnosis
56.14(259) Individual plan for employment (IPE)

DIVISION V
SERVICES

56.15(259) Scope of services
56.16(259) Training
56.17(259) Maintenance
56.18(259) Transportation
56.19(259) Rehabilitation technology
56.20 Reserved
56.21(259) Placement
56.22(259) Supported employment and transitional employment

56.23(259) Miscellaneous or auxiliary services
56.24(259) Facilities
56.25(259) Exceptions to payment for services
56.26(259) Exceptions to duration of services
56.27(259) Maximum rates of payment to training facilities

DIVISION VI
PURCHASING PRINCIPLES

56.28(259) Purchasing

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

56.29(259) Review process
56.30(259) Supervisor review
56.31(259) Mediation
56.32(259) Hearing before impartial hearing officer

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

56.33(259) Collection and maintenance of records
56.34(259) Personally identifiable information
56.35(259) Other groups of records routinely available for public inspection

DIVISION IX
STATE REHABILITATION COUNCIL

56.36(259) State rehabilitation council

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(a/k/a ENTREPRENEURS WITH DISABILITIES PROGRAM)

56.37(259) Purpose
56.38(259) Eligibility requirements
56.39(259) Application procedure
56.40(259) Award of technical assistance funds
56.41(259) Business plan feasibility study procedure
56.42(259) Award of financial assistance funds

CHAPTER 57
Reserved

TITLE XII
PROGRAMS ADMINISTRATION

CHAPTER 58
SCHOOL BREAKFAST AND LUNCH PROGRAM; NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

58.1(283A,256) Authority

DIVISION I
SCHOOL BREAKFAST AND LUNCH PROGRAM

58.2(283A) Definitions
58.3(283A) Agreement required
58.4(283A) State plan
58.5(283A) Service area defined
58.6(283A) School breakfast program
58.7(283A) School lunch program
58.8(283A) Procurement

DIVISION II
NUTRITIONAL CONTENT STANDARDS FOR OTHER FOODS AND BEVERAGES

58.9(256) Definitions
58.10(256) Scope
58.11(256) Nutritional content standards

CHAPTER 59
GIFTED AND TALENTED PROGRAMS

59.1(257) Scope and general principles
59.2(257) Definitions
59.3 Reserved
59.4(257) Program plan
59.5(257) Responsibilities of school districts
59.6(257) Responsibilities of area education agencies
59.7(257) Responsibilities of the department

CHAPTER 60
PROGRAMS FOR STUDENTS OF LIMITED ENGLISH PROFICIENCY

60.1(280) Scope
60.2(280) Definitions
60.3(280) School district responsibilities
60.4(280) Department responsibility
60.5(280) Nonpublic school participation
60.6(280) Funding

CHAPTERS 61 and 62
Reserved

CHAPTER 63
EDUCATIONAL PROGRAMS AND SERVICES
FOR PUPILS IN JUVENILE HOMES

63.1(282) Scope
63.2(282) Definitions
63.3(282) Forms
63.4(282) Budget amendments
63.5(282) Area education agency responsibility
63.6(282) Educational program
63.7(282) Special education
63.8(282) Educational services
63.9(282) Media services
63.10(282) Other responsibilities
63.11(282) Curriculum
63.12(282) Disaster procedures
63.13(282) Maximum class size
63.14(282) Teacher certification and preparation
63.15(282) Aides
63.16(282) Accounting
63.17(282) Revenues
63.18(282) Expenditures
63.19(282) Claims
63.20(282) Audits
63.21(282) Waivers

CHAPTER 64
CHILD DEVELOPMENT COORDINATING COUNCIL

64.1(256A,279) Purpose
64.2(256A,279) Definitions
64.3(256A,279) Child development coordinating council
64.4(256A,279) Procedures
64.5(256A,279) Duties
64.6(256A,279) Eligibility identification procedures
64.7(256A,279) Primary eligibility
64.8(256A,279) Secondary eligibility
64.9(256A,279) Grant awards criteria
64.10(256A,279) Application process
64.11(256A,279) Request for proposals
64.12(256A,279) Grant process
64.13(256A,279) Award contracts
64.14(256A,279) Notification of applicants
64.15(256A,279) Grantee responsibilities
64.16(256A,279) Withdrawal of contract offer
64.17(256A,279) Evaluation
64.18(256A,279) Contract revisions and budget reversions
64.19(256A,279) Termination for convenience
64.20(256A,279) Termination for cause
64.21(256A,279) Responsibility of grantee at termination
64.22(256A,279) Appeal from terminations
64.23(256A,279) Refusal to issue ruling
64.24(256A,279) Request for Reconsideration
64.25(256A,279) Refusal to issue decision on request
64.26(256A,279) Granting a Request for Reconsideration

CHAPTER 65
INNOVATIVE PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

65.1(279) Purpose
65.2(279) Definitions
65.3(279) Eligibility identification procedures
65.4(279) Primary risk factor
65.5(279) Secondary risk factors
65.6(279) Grant awards criteria
65.7(279) Application process
65.8(279) Request for proposals
65.9(279) Grant process
65.10 Reserved
65.11(279) Notification of applicants
65.12(279) Grantee responsibilities
65.13(279) Withdrawal of contract offer
65.14(279) Evaluation
65.15(279) Contract revisions
65.16(279) Termination for convenience
65.17(279) Termination for cause
65.18(279) Responsibility of grantee at termination
65.19(279) Appeals from terminations
65.20(279) Refusal to issue ruling
65.21(279) Requests for Reconsideration

65.22(279) Refusal to issue decision on request
65.23(279) Granting a Request for Reconsideration

CHAPTER 66
SCHOOL-BASED YOUTH SERVICES PROGRAMS

66.1(279) Scope, purpose and general principles
66.2(279) Definitions
66.3(279) Development of a program plan
66.4(279) Program plan
66.5(279) Evaluation of financial support
66.6(279) Responsibilities of area education agencies
66.7(279) Responsibilities of the department of education

CHAPTER 67
EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS
OF AT-RISK CHILDREN AGED BIRTH THROUGH THREE YEARS

67.1(279) Purpose
67.2(279) Definitions
67.3(279) Eligibility identification procedures
67.4(279) Eligibility
67.5(279) Secondary eligibility
67.6(279) Grant awards criteria
67.7(279) Application process
67.8(279) Request for proposals
67.9(279) Award contracts
67.10(279) Notification of applicants
67.11(279) Grantee responsibilities
67.12(279) Withdrawal of contract offer
67.13(279) Evaluation
67.14(279) Contract revisions
67.15(279) Termination for convenience
67.16(279) Termination for cause
67.17(279) Responsibility of grantee at termination
67.18(279) Appeal from terminations
67.19(279) Refusal to issue ruling
67.20(279) Request for Reconsideration
67.21(279) Refusal to issue decision on request
67.22(279) Granting a Request for Reconsideration

CHAPTER 68
IOWA PUBLIC CHARTER SCHOOLS

68.1(256F) Purpose
68.2(256F) Definitions
68.3(256F) Application to a school board
68.4(256F) Review process
68.5(256F) Ongoing review by department
68.6(256F) Renewal of charter
68.7(256F) Revocation of charter

CHAPTER 69
Reserved

TITLE XIII
AREA EDUCATION AGENCIES

CHAPTERS 70 and 71
Reserved

CHAPTER 72
ACCREDITATION OF AREA EDUCATION AGENCIES

72.1(273)	Scope
72.2(273)	Definitions
72.3(273)	Accreditation components
72.4(273)	Standards for services
72.5 to 72.8	Reserved
72.9(273)	Comprehensive improvement plan
72.10(273)	Annual budget and annual progress report
72.11(273)	Comprehensive site visit

TITLE XIV
TEACHERS AND PROFESSIONAL LICENSING

CHAPTERS 73 to 76
Reserved

CHAPTER 77
STANDARDS FOR TEACHER INTERN PREPARATION PROGRAMS

77.1(256)	General statement
77.2(256)	Definitions
77.3(256)	Institutions affected
77.4(256)	Criteria for Iowa teacher intern preparation programs
77.5(256)	Approval of programs
77.6(256)	Periodic reports
77.7(256)	Approval of program changes
77.8(256)	Governance and resources
77.9(256)	Diversity
77.10(256)	Faculty
77.11(256)	Teacher intern selection
77.12(256)	Curriculum and instruction
77.13(256)	Candidate support
77.14(256)	Candidate assessment
77.15(256)	Program evaluation

CHAPTER 78
Reserved

CHAPTER 79
STANDARDS FOR PRACTITIONER AND ADMINISTRATOR PREPARATION PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

79.1(256)	General statement
79.2(256)	Definitions
79.3(256)	Institutions affected
79.4(256)	Criteria for practitioner preparation programs
79.5(256)	Approval of programs
79.6(256)	Visiting teams

79.7(256) Periodic reports
79.8(256) Reevaluation of practitioner preparation programs
79.9(256) Approval of program changes

DIVISION II
SPECIFIC EDUCATION STANDARDS APPLICABLE TO ALL PRACTITIONER PREPARATION PROGRAMS

79.10(256) Governance and resources standard
79.11(256) Diversity standard
79.12(256) Faculty standard
79.13(256) Assessment system and unit evaluation standard

DIVISION III
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO INITIAL PRACTITIONER PREPARATION PROGRAMS FOR TEACHER CANDIDATES

79.14(256) Teacher preparation clinical practice standard
79.15(256) Teacher preparation candidate knowledge, skills and dispositions standard

DIVISION IV
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO ADMINISTRATOR PREPARATION PROGRAMS

79.16(256) Administrator preparation clinical practice standard
79.17(256) Administrator candidate knowledge, skills and dispositions standard
79.18 Reserved

DIVISION V
SPECIFIC EDUCATION STANDARDS APPLICABLE ONLY TO PRACTITIONER PREPARATION PROGRAMS OTHER THAN TEACHER OR ADMINISTRATOR PREPARATION PROGRAMS

79.19(256) Purpose
79.20(256) Clinical practice standard
79.21(256) Candidate knowledge, skills and dispositions standard

CHAPTER 80
STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS

80.1(272) General statement
80.2(272) Definitions
80.3(272) Institutions affected
80.4(272) Criteria for Iowa paraeducator preparation programs
80.5(272) Approval of programs
80.6(272) Periodic reports
80.7(272) Reevaluation of paraeducator preparation programs
80.8(272) Approval of program changes
80.9(272) Organizational and resources standards
80.10(272) Diversity
80.11(272) Paraeducator candidate performance standards

CHAPTERS 81 and 82
Reserved

CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

83.1(284,284A) Purposes
83.2(284,284A) Definitions

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

83.3(284) Mentoring and induction program for beginning teachers
83.4(284) Iowa teaching standards and criteria
83.5(284) Evaluator approval training
83.6(284) Professional development for teachers
83.7(284) Teacher quality committees

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

83.8(284A) Administrator quality program
83.9(284A) Mentoring and induction program for administrators
83.10(284A) Iowa school leadership standards and criteria for administrators
83.11(284A) Evaluation
83.12(284A) Professional development of administrators

CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

84.1(256) Purpose
84.2(256) Definitions
84.3(256) Registration fee reimbursement program
84.4(256) NBC annual award
84.5(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award

CHAPTERS 85 to 93
Reserved

TITLE XV
EDUCATIONAL EXCELLENCE

CHAPTER 94
ADMINISTRATIVE ADVANCEMENT AND RECRUITMENT PROGRAM

94.1(256) Purpose
94.2(256) Eligibility identification procedures
94.3(256) Grant award procedure
94.4(256) Application process
94.5(256) Request for proposals
94.6(256) Grant process
94.7(256) Awards contract
94.8(256) Notification of applicants
94.9(256) Grantee responsibility

CHAPTER 95
EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION IN EDUCATIONAL AGENCIES

95.1(256) Purpose
95.2(256) Definitions
95.3(256) Equal employment opportunity standards
95.4(256) Duties of boards of directors
95.5(256) Plan components
95.6(256) Dissemination
95.7(256) Reports

TITLE XVI
SCHOOL FACILITIES

CHAPTER 96
STATEWIDE/LOCAL OPTION SALES AND SERVICES TAX FOR SCHOOL INFRASTRUCTURE

96.1(423E,423F) Definitions
96.2(423E,423F) Reports to the department
96.3(423E,423F) Combined actual enrollment
96.4(423E,423F) Application and certificate of need process
96.5(423E,423F) Review process
96.6(423E,423F) Award process
96.7(423E,423F) Applicant responsibilities
96.8(423E,423F) Appeal of certificate denial

CHAPTER 97
SUPPLEMENTARY WEIGHTING

97.1(257) Definitions
97.2(257) Supplementary weighting plan
97.3(257) Supplementary weighting plan for at-risk students
97.4(257) Supplementary weighting plan for a regional academy
97.5(257) Supplementary weighting plan for whole-grade sharing
97.6(257) Supplementary weighting plan for ICN video services
97.7(257) Supplementary weighting plan for operational services

CHAPTER 98
FINANCIAL MANAGEMENT OF CATEGORICAL FUNDING

DIVISION I
GENERAL PROVISIONS

98.1(256,257) Definitions
98.2(256,257) General finance
98.3 to 98.10 Reserved

DIVISION II
APPROPRIATE USE OF BUDGETARY ALLOCATIONS

98.11(257) Categorical and noncategorical student counts
98.12(257,299A) Home school assistance program
98.13(256C,257) Statewide voluntary four-year-old preschool program
98.14(257) Supplementary weighting
98.15(257) Operational function sharing supplementary weighting
98.16(257,280) Limited English proficiency (LEP) weighting
98.17(256B,257) Special education weighting
98.18(257) At-risk formula supplementary weighting
98.19(257) Reorganization incentive weighting
98.20(257) Gifted and talented program
98.21(257) Returning dropout and dropout prevention program
98.22(257) Use of the unexpended general fund balance
98.23(256D,257) Iowa early intervention block grant
98.24(257,294A) Educational excellence, Phase II
98.25(257,284) Educator quality basic salary
98.26(257,284) Educator quality professional development
98.27 to 98.39 Reserved

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

98.40(256,257,298A) Grants in aid
98.41(257,294A) Educational excellence, Phase I
98.42(257,284) Beginning teacher mentoring and induction program
98.43(257,284A) Beginning administrator mentoring and induction program
98.44(257,301) Nonpublic textbook services
98.45 to 98.59 Reserved

DIVISION IV
APPROPRIATE USE OF SPECIAL TAX LEVIES AND FUNDS

98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301, 423E,423F,565,670) Levies and funds
98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund
98.62(279,296,298,670) Management fund
98.63(298) Library levy fund
98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund
98.65(276,300) Public educational and recreational levy (PERL) fund
98.66(257,279,298A,565) District support trust fund
98.67(257,279,298A,565) Permanent funds
98.68(76,274,296,298,298A) Debt service fund
98.69(76,273,298,298A,423E,423F) Capital projects fund
98.70(279,280,298A) Student activity fund
98.71(256B,257,298A) Special education instruction fund
98.72(282,298A) Juvenile home program instruction fund
98.73(283A,298A) School nutrition fund
98.74(279,298A) Child care and before- and after-school programs fund
98.75(298A) Regular education preschool fund
98.76(298A) Student construction fund
98.77(298A) Other enterprise funds
98.78 to 98.81 Reserved
98.82(298A) Internal service funds
98.83 to 98.91 Reserved
98.92(257,279,298A,565) Private purpose trust funds
98.93(298A) Other trust funds
98.94 to 98.100 Reserved
98.101(298A) Agency funds
98.102 to 98.110 Reserved
98.111(24,29C,257,298A) Emergency levy fund
98.112(275) Equalization levy fund

CHAPTERS 99 and 100
Reserved

TITLE XVII
PROTECTION OF CHILDREN

CHAPTER 101
Reserved

CHAPTER 102
PROCEDURES FOR CHARGING AND INVESTIGATING INCIDENTS OF ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

102.1(280)	Statement of intent and purpose
102.2(280)	Definitions
102.3(280)	Jurisdiction
102.4(280)	Exceptions
102.5(280)	Duties of school authorities
102.6(280)	Filing of a report
102.7(280)	Receipt of report
102.8(280)	Duties of designated investigator—physical abuse allegations
102.9(280)	Duties of designated investigator—sexual abuse allegations
102.10(280)	Content of investigative report
102.11(280)	Founded reports—designated investigator's duties
102.12(280)	Level-two investigator's duties
102.13(280)	Retention of records
102.14(280)	Substantial compliance
102.15(280)	Effective date

CHAPTER 103
CORPORAL PUNISHMENT BAN; RESTRAINT; PHYSICAL CONFINEMENT AND DETENTION

103.1(256B,280)	Purpose
103.2(256B,280)	Ban on corporal punishment
103.3(256B,280)	Exclusions
103.4(256B,280)	Exceptions and privileges
103.5(256B,280)	Reasonable force
103.6(256B,280)	Physical confinement and detention
103.7(256B,280)	Additional minimum mandatory procedures
103.8(256B,280)	Additional provisions concerning physical restraint

CHAPTERS 104 to 119
Reserved

TITLE XVIII
EARLY CHILDHOOD

CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF EARLY INTERVENTION SERVICES

DIVISION I
PURPOSE, GOAL, AND OUTCOMES

120.1(34CFR303)	Purpose
120.2(34CFR303)	Overall goal and outcomes of Early ACCESS
120.3	Reserved

DIVISION II
DEFINITIONS

120.4(34CFR303)	Definitions
120.5 and 120.6	Reserved

DIVISION III
GOVERNANCE, GENERAL ADMINISTRATION, AND SUPERVISION

120.7(34CFR303) Early ACCESS system—state level
120.8(34CFR303) Early ACCESS system—regional and community levels
120.9 to 120.11 Reserved

DIVISION IV
SERVICES AVAILABLE TO ELIGIBLE CHILDREN

120.12(34CFR303) Early intervention services
120.13(34CFR303) Services in natural environment
120.14(34CFR303) Types of early intervention services
120.15(34CFR303) Service coordination
120.16 to 120.18 Reserved

DIVISION V
PERSONNEL

120.19(34CFR303) Comprehensive system of personnel development (CSPD)
120.20 to 120.22 Reserved

DIVISION VI
IDENTIFICATION OF ELIGIBLE CHILDREN

120.23(34CFR303) Child find system
120.24(34CFR303) Public access to information and services
120.25 and 120.26 Reserved
120.27(34CFR303) Comprehensive identification procedures
120.28(34CFR303) Nondiscriminatory procedures
120.29(34CFR303) Services prior to completion of evaluation and family assessment
120.30(34CFR303) Required timeline
120.31 to 120.33 Reserved

DIVISION VII
INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

120.34(34CFR303) IFSP process
120.35(34CFR303) Participants at initial IFSP meeting
120.36(34CFR303) Alternate methods of involvement
120.37(34CFR303) IFSP meeting notice
120.38(34CFR303) Accessibility and convenience of meetings
120.39(34CFR303) Interagency service planning
120.40(34CFR303) Content of the IFSP
120.41(34CFR303) Parental consent before providing services
120.42(34CFR303) Maintenance of records
120.43(34CFR303) Provision of year-round services
120.44(34CFR303) Responsibility and accountability for IFSPs
120.45 and 120.46 Reserved
120.47(34CFR303) Assessments
120.48(34CFR303) Periodic review
120.49(34CFR303) Periodic review team
120.50(34CFR303) Annual review
120.51(34CFR303) Annual review team participants
120.52(34CFR303) Alternative methods of involvement
120.53 to 120.55 Reserved

DIVISION VIII
TRANSITION

120.56(34CFR303) Transition process
120.57(34CFR303) Transition plan and continuity of services
120.58(34CFR303) Family involvement and notification of the local education agency

120.59(34CFR303) Transmittal of records
120.60(34CFR303) Transition planning for students not eligible for Part B preschool services
120.61(34CFR303) Transition planning for students eligible for Part B preschool services
120.62 to 120.64 Reserved

DIVISION IX
PROCEDURAL SAFEGUARDS

120.65(34CFR303) Records
120.66(34CFR303) Prior written notice
120.67(34CFR303) Parental consent
120.68(34CFR303) Surrogate parents
120.69(34CFR303) Complaints
120.70(34CFR303) Mediation
120.71(34CFR303) Due process hearings
120.72 to 120.74 Reserved

DIVISION X
CONTINUOUS IMPROVEMENT MONITORING

120.75(34CFR303) Monitoring
120.76 and 120.77 Reserved

DIVISION XI
FINANCIAL RESPONSIBILITY

120.78(34CFR303) Services at public expense for eligible children and families, and coordination of interagency resources
120.79(34CFR303) Interagency agreement
120.80(34CFR303) Payer of last resort
120.81(34CFR303) Nonsupplanting and payment for services
120.82(34CFR303) Use of insurance
120.83(34CFR303) Policy for contracting or otherwise arranging for services
120.84(34CFR303) Reimbursement procedure
120.85(34CFR303) Resolution of disputes

TITLE XI
VOCATIONAL REHABILITATION EDUCATION

CHAPTER 56
IOWA VOCATIONAL REHABILITATION SERVICES

[Prior to 9/7/88, see Public Instruction Department[670] Ch 35]

DIVISION I
SCOPE AND GENERAL PRINCIPLES

281—56.1(259) Responsibility of division. The division is responsible for providing services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations therefor.

281—56.2(259) Nondiscrimination. The division shall not discriminate on the basis of race, creed, color, sex, national origin, religion, duration of residency, or disability in the determination of a person's eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

DIVISION II
DEFINITIONS

281—56.3(259) Definitions. For the purpose of this chapter, the indicated terms are defined as follows:

"Act" means the federal Rehabilitation Act of 1973, as amended and codified at 29 U.S.C. Section 701, et seq.

"Aggregate data" means information about one or more aspects of division clients, or from some specific subgroup of division clients, but from which personally identifiable information on any individual cannot be discerned.

"Assistive technology device" means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual's customary environment;
2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;
3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
5. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and
6. Providing training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

"Case record" means the file of personally identifiable information, whether written or electronic in form, on an individual that is collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

"Client" means an eligible individual receiving benefits or services from any part of the division and shall include former clients of the division whose files or records are retained by the division.

"Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting and for which the client is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

"Department" means the department of education.

"Designated representative" means anyone the client designates to represent the client's interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

"Division" means the division of vocational rehabilitation services of the department of education.

"Employment outcome" means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment, including self-employment, telecommuting, homemaking, other unpaid work within the individual's family, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

"Home modification" means the alteration of an already existing living unit to make it usable or more usable by a person with a disability who is involved with the independent living program or as necessary to achieve stable employment as part of an individual plan for employment.

"Impartial hearing officer" or *"IHO"* means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved previously in the vocational rehabilitation of the applicant or client; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person's objectivity.

"Independent living services" or *"IL services"* means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

"Individual plan for employment" or *"IPE"* means a plan that specifies the services needed by an eligible individual and the involvement of other payers and must include the expected employment outcome and the timeline for achievement of the expected employment outcome.

"Individual with a most significant disability" means an individual who is seriously limited in three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome and includes an individual who, because of a disability, has been separated from employment or is in danger of becoming separated from employment.

"Individual with a significant disability" means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome or who is a recipient of SSD/SSI.

"Integrated work setting" means job sites where most of the client's coworkers are not disabled and the client interacts on a regular basis, in the performance of job duties, with employees who are not disabled; or if the client is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or the client has no coworkers; or if the only coworkers are part of a work group of eight or fewer individuals with disabilities, the client has regular contact with nondisabled individuals, other than the persons providing support service, including members of the general public.

"Maintenance" means monetary support provided to a client for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the client and that are necessitated by the client's participation in the program.

"Mediation" means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

"Menu of services" means the services provided by community partners to assist an individual with a disability in achieving an employment outcome. The services are selected and jointly agreed to by the counselor and client of the division. Payments for services are made based on a fee structure that is published and updated annually and include the following:

1. Referral to the community provider completed by the counselor and client for a desired outcome;

2. Assessment through a community work-site assessment, comprehensive vocational evaluation, facility work-site assessment, career exploration, or job shadowing assessment to identify a realistic vocational goal that is compatible with the individual's needs, preferences, abilities, disability, and informed choice;

3. Enhanced planning requested by the counselor and coordinated with community partners when conflicting and multiple issues are preventing the client from moving forward with employment, so that a comprehensive plan is developed to achieve the employment outcome;

4. Placement services selected by the counselor, client and interested partners to prepare for and obtain employment. Placement services include the following:

- Vocational preparation that enhances and improves the client's ability to perform specific work, learn the necessary skills to do a specific job, minimize negative work habits and behaviors that have impeded job retention, develop skills in finding a job, and learn how to navigate transportation systems to and from work;
- Work adjustment training that remedies negative work habits and behaviors, improves work tolerance, and develops strategies to improve a client's ability to maintain employment;
- Job-seeking skills training that teaches the client strategies necessary to find employment with or without assistance and at the level required by the client's needs;
- Job development and job follow-up that places the client on a job in the community working for a business, maintains contact with the employer on the client's progress, is jointly funded through the Medicaid waiver program when appropriate, and is purchased only when used in conjunction with another required service;
- Employer development that, through a job analysis, identifies for businesses the job tasks and customized training plan for the job for which the client will be trained, is authorized only as a stand-alone service when the Medicaid waiver funds the job development and is purchased only when used in conjunction with another required service;
- Supported job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that continues as needed after the division file is closed;
- Selected job coaching that assists the client in learning job-specific skills and work habits and behaviors while employed on the job and that is purchased only when approved by the area office supervisor.

"Ongoing support services" means services that are needed to support and maintain individuals with the most significant disabilities in supported employment. Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.

"Physical or mental impairment" means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or

2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

3. Any impairment for which an individual has a documented history of receiving special education services in both elementary and secondary school.

"Physical or mental restoration services" means:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

2. Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

3. Dentistry;

4. Nursing services;

5. Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

6. Drugs and supplies;

7. Prosthetic and orthotic devices;

8. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

9. Podiatry;

10. Physical therapy;

11. Occupational therapy;

12. Speech and hearing therapy;

13. Mental health services;

14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

15. Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

16. Other medical or medically related rehabilitation services.

"Rehabilitation engineering" means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

"Rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

"Residency requirement" is a condition of eligibility and is met by an individual who resides in the state of Iowa and is present and available for participation in a rehabilitation plan.

"Satisfactory employment" means stable employment consistent with an individual's IPE and acceptable to both the individual and the employer.

"Status" means the existing condition or position of a case. The specific case statuses are as follows:

00-0 Referral (individual has been referred to or personally contacted the division by any means);

02-0 Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

06-0 Trial work experiences/extended evaluation (individual's abilities, capabilities, and capacities are explored);

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-__ Accepted for services (eligible); substatuses are:

10-0 Eligible individuals other than high school students;

10-1 Eligible high school students;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with client directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-__ Training (when training is the most significant service called for on the IPE); substatuses are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 Correspondence training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when client has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-__ or 12-0 when a suitable individual plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-__ Closed after postemployment services; substatuses are:

33-1 Individual is returned to suitable employment or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual's name is at top of waiting list).

"Substantial impediment to employment" means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capacities.

"Supported employment" means:

1. Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, with ongoing support services for individuals with the most significant disabilities:

- For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and
- Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or

2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.

"Supported employment services" means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by the division and documented through the employment readiness analysis and placement plan:

1. For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and

2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.

"Transitional employment," as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

"Transition services" means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's IPE.

"Trial work experiences" means an exploration of the individual's abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division's services.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION III
ELIGIBILITY

281—56.4(259) Individuals who are recipients of SSD/SSI. Recipients of social security disability payments or supplemental security income payments are determined automatically as being significantly disabled and are eligible for vocational rehabilitation services if such recipients demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259). Recipients who demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259) must also demonstrate need in the employment plan under rule 281—56.14(259). Nothing in this rule automatically entitles a recipient of social security disability payments or supplemental security income payments to any good or service provided by the division.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.5(259) Eligibility for vocational rehabilitation services. Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

56.5(1) A determination by qualified personnel that the applicant has a physical or mental impairment;

56.5(2) A determination by qualified personnel that the applicant's physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

56.5(3) A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent

with the applicant's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant's disability;

56.5(4) A determination that the individual meets the residency requirement.

281—56.6(259) Eligibility for specific services. Financial need must be established prior to provision of certain services at the division's expense. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available. The following criteria are established for determination of eligibility of clients for the following services:

56.6(1) *Physical restoration.*

a. The service is necessary for the client's satisfactory occupational adjustment.

b. The condition causing disability is relatively stable or slowly progressive.

c. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

d. The prognosis for life and employability are favorable.

56.6(2) *Training and training materials.*

a. The training and books and supplies are necessary for the client's satisfactory occupational adjustment.

b. The client has the mental and physical capacity to acquire a skill that the client can perform in an occupation commensurate with the client's abilities and limitations.

c. The client is not otherwise precluded by law from employment in the client's field of training.

d. The client meets the residency requirement.

56.6(3) *Occupational licenses and occupational tools and equipment.* The division may pay for occupational licenses and customary occupational tools and equipment when necessary for the client's entrance into, and successful performance in, a selected occupation.

56.6(4) *Transportation.* A client may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement, if such transportation is part of the client's IPE. A companion may be provided transportation at the division's expense if the client cannot travel alone.

56.6(5) *Maintenance.* A client is eligible for maintenance when it is necessary to the client's vocational rehabilitation and is an extra expense incurred due to the IPE.

281—56.7(259) Areas in which exceptions shall not be granted. Pursuant to federal law, an exception shall not be granted for any of the following requirements:

1. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).
2. The required use of trial work experiences prior to closure in Status 08-0 due to severity of disability.
3. The required contents of the IPE.
4. Identification of a long-term follow-up provider in supported employment cases.
5. Being in employment and in Status 22-0 for 90 days prior to Status 26-0 closure.
6. Status progression, restrictions, and time frames, such as the federal requirement that eligibility be determined within 60 days of an individual's application for services unless the individual has agreed to an extension.

7. Services may be provided only to individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

281—56.8(259) Waiting list. As required by the Act and 34 CFR 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

1. Individuals with most significant disabilities;
2. Individuals with significant disabilities; and
3. Other individuals.

An individual's order of selection is determined by the waiting list and the date on which the individual was deemed eligible for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

281—56.9(259) Individuals who are blind. Pursuant to 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind. Individuals with multiple disabilities who also are blind may receive technical assistance and consultation services while the department for the blind provides their rehabilitation plan.

281—56.10(259) Students in high school. The division may serve students in high school, provided the student demonstrates the maturity level, skills, and learning characteristics required to legally work in competitive environments for nonfamily members. If an applicant is in high school and is determined to be eligible for vocational rehabilitation services, such services may begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible.

When the division determines that a student is eligible for services, the student's place on the waiting list under rule 281—56.8(259) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the student's case shall be moved to Status 10-1. Otherwise the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of eligibility. An IPE may be written for a student in Status 10-1 at any time the student's vocational goal and the services necessary to reach that goal have been agreed upon by the student and the student's division counselor. The IPE must be in place when the student exits the secondary school system, unless the student has agreed to an extension or is on a waiting list or applied for services in the last quarter of the student's senior year.

The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings to provide consultation and technical assistance if the student is on the waiting list for services. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment or job coaching services, as early as the student's junior year of secondary school. Students in high school or in an alternative high school who have not yet met high school graduation requirements after four years of secondary enrollment may continue to receive said services that do not supplant the responsibilities of the high school. Students in their final year of high school who have made satisfactory progress and who have demonstrated skills to work in their trained profession may receive assistance in purchasing tools to be used on a job.

281—56.11(259) Establishment of financial need. The division establishes the client's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic,

guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI are not subject to a financial needs test for any services but must demonstrate eligibility under rules 281—56.8(259) and 281—56.13(259), as well as demonstrate need in the employment plan under rule 281—56.14(259).

In determining financial need, the clients or, in the case of minors, the minors' parents or guardians are required to make a specific declaration regarding all family income from any source that may be applied toward the cost of rehabilitation services, except those of diagnosis, counseling, training and placement, which are provided without regard to financial need; however, the division shall not pay for more than the balance of the cost of the service minus comparable services and benefits. The income should be available to the client; that is, actually on hand, free from prior obligations and ready when needed.

The division shall observe the following policies in making a determination of financial need based upon the findings:

56.11(1) All services requiring the determination of financial need are provided on the basis of supplementing the resources of the client or of those responsible for the client.

56.11(2) A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

56.11(3) Consideration shall be given to the client's responsibility for the immediate needs and maintenance of the client's dependents, and the client shall be expected to reserve sufficient funds to meet the client's family obligations and to provide for the family's future care, education and medical expenses.

56.11(4) Consideration shall also be given to factors such as prior obligations as well as to the desirability of conserving the client's own resources for future rehabilitation purposes, such as becoming established in business or providing a business automobile required for transportation or employment.

56.11(5) Income up to a reasonable amount should be considered from the standpoint of its conservation and its maximum utilization to the long-term interest of the client. Small casual earnings and unpredictable gifts of indeterminate value should not be counted as resources.

56.11(6) Financial aid from public assistance is disregarded as a resource.

56.11(7) Grants and scholarships, while not required to be searched for a comparable benefit, may be considered when determining financial support of a plan.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION IV
CASE MANAGEMENT

281—56.12(259) Case finding and intake. The division seeks to locate all disabled individuals of employable age who desire to be employed full- or part-time and may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the division has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, and other related services. All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call.

281—56.13(259) Case diagnosis. The case diagnosis constitutes a comprehensive study of the client, including medical as well as a vocational diagnosis of the individual. Each case diagnosis is based on pertinent information, including the individual's health and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments.

56.13(1) *Medical diagnosis.*

a. As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable, secured from recognized specialists in specific fields indicated by the general medical

diagnosis. Whenever possible the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

b. The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual and is from one of the following providers or sources:

(1) A licensed physician or surgeon;

(2) A licensed osteopathic physician or surgeon;

(3) A licensed doctor of chiropractic;

(4) A licensed psychologist;

(5) A licensed physician assistant;

(6) A licensed advanced registered nurse practitioner;

(7) A native healing practitioner recognized as such by an Indian tribe when services are being provided to American Indians with disabilities and the native healing practitioner services are necessary to achieve the individual's vocational rehabilitation objective;

(8) A licensed dentist;

(9) A licensed ophthalmologist;

(10) A licensed audiologist;

(11) A licensed independent social worker (LISW);

(12) A licensed mental health counselor;

(13) A certified school psychologist;

(14) A recent individualized education program (IEP) as recognized by the Iowa department of education which documents a history of special education programs or services; or

(15) An accredited or certified medical or treatment institution recognized by the state of Iowa or licensed by the department of public health or department of human services in any other state.

56.13(2) *Vocational diagnosis.* The methods of the vocational diagnosis include counseling interviews with the client; reports as may be needed, including when necessary in the individual case, reports from schools, employers, social agencies, and others; and psychological information.

56.13(3) *Recording case data.* The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services and the reason for closing the case together with a justification of the closure. A case record may not be destroyed until three years after the case has been closed.

281—56.14(259) Individual plan for employment (IPE).

56.14(1) *Content.* The IPE contains the client's expected employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, the method by which satisfactory progress will be evaluated, and the methods available for procuring the services.

56.14(2) *Client's participation and approval.* The IPE is formulated with the client's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the client's vocational rehabilitation whether or not services are at the expense of the division.

56.14(3) *Conditions for development of the IPE.* The basic conditions to be considered during the development of the IPE are:

a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of vocational rehabilitation; and

b. That all services are to be carried to completion provided, however, that the division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed or when the financial condition of the individual or the division makes termination necessary.

56.14(4) *Cooperation by the client.* The division requires good conduct, regular attendance and cooperation of all individuals engaged in the rehabilitation plan's implementation. The division makes the following provisions for ensuring trainee cooperation: instruction, verbally or by pamphlet, emphasizing the importance of these factors to the success of the IPE; at the beginning of the program,

advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; promptly calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits, with due commendation for effective effort; and maintaining good relationships with the training agency.

56.14(5) *Ticket to work.* The client's signature on the IPE verifies the ticket assignment to the division unless otherwise directed by the client.

DIVISION V
SERVICES

281—56.15(259) Scope of services. All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their vocational rehabilitation and must be included in the employment plan and agreed to by the eligible individual's counselor before the service is delivered. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the client's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective because of the client's limited funds and the unavailability of free medical services.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.16(259) Training.

56.16(1) Duration of training. Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

56.16(2) Types of training. The types of training programs available are as follows:

a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.

b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, through a selection from the menu of services, or through a combination of any or all of these methods.

c. Prevocational training, which includes any form of basic training given for the acquisition of background knowledge or skills prerequisite or preparatory to vocational training or to employment where the primary occupational knowledge and skills are learned on the job or through a selection from the menu of services.

d. Work adjustment training, which includes any training given for any one or a combination of the following reasons:

(1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.

(2) To develop or increase work tolerance prior to engaging in prevocational or vocational training, or in employment.

(3) To develop work habits and to orient the individual to the world of work.

(4) To provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of the use of a member of the body or the loss of a functional capacity.

e. Job coaching, which includes, but is not limited to, intensive on-the-job training necessary to teach an employee both the job duties and job-related responsibilities.

f. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment for individuals with chronic mental illness. Supported employment is limited to a period of 18 months unless a longer period is established in the IPE.

g. Customized training, which is a plan developed by the client's counselor in cooperation with the client and the employer-trainer whereby the employer-trainer accepts the client for training for a specific job or job family, paid or unpaid, that may or may not result in employment with the training employer.

56.16(3) Scope of training. The division may provide training services as long as those services are part of a client's IPE. Training facilities shall be selected to meet the client's health, disability, and program needs. Training facilities within the state are preferred; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located.

56.16(4) Financial assistance for postsecondary training. Calculations of financial assistance for postsecondary training are determined annually. In order for the division to continue to assist the greatest practical number of eligible clients, assistance shall be no less than 40 percent and no more than 60 percent of the cost of attending the least expensive in-state public institution for a course of instruction leading to an undergraduate degree. In all cases, the postsecondary institution in which the student is enrolled must be accredited by an entity recognized by the federal Department of Education as having authority to accredit postsecondary institutions.

a. Tuition and fee-based general assistance.

(1) Second year or less status. A student is considered to be in second year or less status when the student has earned fewer than 60 semester or 90 quarter credit hours in the student's present area of study or discipline; when the student is enrolled in a community college or other two-year postsecondary institution; or when the student is enrolled in a program whose terminal degree is an associate degree but the student has not yet attained the associate degree. For an eligible student in second year or less status, the division shall pay no less than 40 percent and no more than 60 percent of the least expensive per-credit-hour tuition charged by an Iowa community college.

(2) Third or fourth year status. A student is considered to be in third or fourth year status if the student has earned at least 60 semester or 90 quarter credit hours or has achieved an associate degree in the student's present area of study or discipline but has not yet earned a postsecondary baccalaureate degree. For an eligible student in third or fourth year status, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive Iowa regents institution. Students in third or fourth year status who take graduate courses are only eligible to receive the established assistance rate for third or fourth year status.

(3) Medical school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a medical doctor (MD) or doctor of osteopathy (DO) degree is eligible for assistance under this paragraph. For a student who is an MD or DO candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of medicine of the University of Iowa. Students pursuing any other graduate degree in a medical arts program may be eligible for assistance under subparagraph 56.16(4)*"a"*(5).

(4) Law school. Only a student enrolled full-time in a graduate school pursuing a course of studies that will lead to a doctor of jurisprudence (JD) degree is eligible for assistance under this paragraph. For a student who is a JD candidate, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college of law of the University of Iowa. Students pursuing any other graduate degree from a law school may be eligible for assistance under subparagraph 56.16(4)*"a"*(5).

(5) Graduate or postgraduate school. Notwithstanding subparagraphs 56.16(4)*"a"*(3) and (4), for a student enrolled in a graduate or postgraduate school, the division shall pay no less than 40 percent and no more than 60 percent of the tuition charged by the college or university, limited to the amount charged by the least expensive comparable graduate school at an Iowa regents institution.

(6) Distance learning (on-line courses). For a student enrolled in a distance learning course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

(7) Continuing education courses. For a student taking a noncredit continuing education course, the division shall pay the lesser of one of the following:

1. No less than 40 percent and no more than 60 percent of the actual cost of the course, or
2. The rate established for a student in second year or less status.

(8) Out-of-state postsecondary institutions. For an eligible student who attends a postsecondary institution located outside Iowa, the division shall pay at the same rates set in this subrule.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the client has no resources to address basic living expenses.

(3) Books and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be no less than 40 percent and no more than 60 percent of the amount based on tuition and fees.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available for free through the school attended by the client. Tutoring for program entrance examinations, such as the GRE, LSAT, or MCAT, is not allowed without an exception approved by the supervisor.

(5) Unless approved as an exception, tools and equipment required for participation in a training program shall be provided in lieu of the tuition and fee amount.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount.

(7) Unless approved as an exception, fees for specialized equipment or computer programs needed to learn a subject or to access a course shall be provided in lieu of the tuition and fee amount.

(8) Fees for certification tests that are part of a course shall be paid pursuant to the 40 percent to 60 percent range established as the tuition and fees standard. For certifications and licensure fees that are not part of a course, the division shall use the financial needs assessment form to determine the level of division participation.

56.16(5) General guidance regarding postsecondary training is available from the division's case services manual.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.17(259) Maintenance. The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the client or the client's family. Maintenance is not intended to provide relief from poverty or abject living conditions. Guidance regarding the financial support of maintenance is available from the division's case service manual.

281—56.18(259) Transportation. When necessary to enable an applicant or a client to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency. The division shall not purchase or lease vehicles for a client. The division shall not pay for maintenance or repair of vehicles unless written approval of the supervisor allows for an exception.

281—56.19(259) Rehabilitation technology.

56.19(1) Rehabilitation technology services are available at any point in the rehabilitation process, except to those clients on the waiting list. Such services include, as appropriate, an evaluation of the

ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home.

56.19(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:

a. The division shall pay for no more than $2,000 for home modifications.

b. The division shall not pay anything toward the modification of a second living unit.

c. Rescinded IAB 8/15/07, effective 9/19/07.

281—56.20(259) Business initiatives. Rescinded IAB 8/27/08, effective 10/1/08.

281—56.21(259) Placement. The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly through a service from the menu of services, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the client and ordinarily include some combination of the following: evaluation of the client's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications and in conduct and appearance during interviews; employer contacts; registration with the state workforce development center administration division; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; time-limited job coaching; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.22(259) Supported employment and transitional employment. As defined herein, supported employment is provided to clients with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment as defined herein for clients with mental illnesses. Supported employment is provided either directly by division staff or through the selection of an item from the menu of services.
[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.23(259) Miscellaneous or auxiliary services.

56.23(1) *Family member services.* If necessary to enable an applicant or client to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that it is legally able to provide to a client, as long as the purpose of the service is to assess the ability of the client to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or client. A family member is an individual who either (a) is a relative or guardian of an applicant or client or (b) lives in the same household as an applicant or client and has a substantial interest in the well-being of the applicant or client.

56.23(2) *Interpreter and note taker.* If deemed necessary by the division to enable a client to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to such client, unless provision of such services is the statutory responsibility of an institution or organization.

Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons unable to communicate verbally in English. Persons receiving services include deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures,

and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included. The division shall purchase sign language interpreter services, including transliterating services, from appropriately licensed interpreters only.

Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped. These services are only purchased when the law states that the presenter or institution is not statutorily responsible.

56.23(3) *Other goods and services.* Other goods and services include anything that is legal and necessary to the completion of the client's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL clients.

281—56.24(259) Facilities.

56.24(1) *Types of facilities.* It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services from the menu of services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

56.24(2) *Standards for facilities providing specialized training or other services.* The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, and trade and commercial schools for residence and correspondence training. The general practice of the division is to utilize community partners to deliver items from the menu of services based on the partners' ability to supply the quality of training desired and to achieve expected outcomes resulting in job placements for clients of the division.

56.24(3) *Facilities providing training.* Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

56.24(4) *Facilities providing personal adjustment training.* In addition to other standards set for tutorial and customized training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding of the personal adjustment needs of the individual and their importance to the client's total rehabilitation.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.25(259) Exceptions to payment for services. As required by the Act and 34 CFR 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

56.25(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. The applicant has used all sources available, such as applying for and using all available loans in postsecondary training situations.

c. Family issues, such as dissolution of marriage, loss of income, or estrangement, render resources unavailable.

d. Academic performance is poor, but could reasonably be expected to return to the required threshold in one semester.

e. Documented evidence supports that the client is in the process of repaying a previously defaulted student loan.

56.25(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.

b. An absolute dollar limit on specific service categories or on the total services provided to an individual may not be established.

56.25(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

281—56.26(259) Exceptions to duration of services. As required by the Act and 34 CFR 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services. In order to exceed the duration of service as defined in the employment plan, a client must follow through on the agreed-upon employment plan and related activities and keep the division informed of the client's progress.

56.26(1) *Reasons for exceptions.* Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

a. The need is disability-related.

b. Academic performance is poor, but could reasonably be expected to return to or above the required threshold in one semester.

c. The service is necessary and required in order for the client to attain employment.

56.26(2) *Prohibitions.* Pursuant to federal law, the division is subject to the following prohibitions:

a. The time period established for the provision of services shall not be so short as to effectively deny an individual a necessary service.

b. An absolute time limit on the provision of a specific service or on the total services provided to an individual may not be established. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IPE.

56.26(3) *Exception process.* A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.27(259) Maximum rates of payment to training facilities. In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

DIVISION VI
PURCHASING PRINCIPLES

281—56.28(259) Purchasing.

56.28(1) *General purchasing principles.*

a. The division shall purchase only those items/models that allow a client to meet the client's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a client's vocational objective or that serve primarily to enhance the client's personal life.

b. The division shall purchase the most economical item/model that meets the client's vocational needs.

c. The division shall seek out the most economical alternatives to meet the client's vocational needs.

d. The division shall encourage all clients to develop strategies and savings programs to pay for replacement items/models or upgrades.

e. Items purchased for a client become the property of the client but may be repossessed by the division, subject to reimbursement to the client for the client's share of the purchase price, if the client does not attain employment prior to case closure.

56.28(2) *Client-specific purchasing principles.* When considering what item/model to purchase for a specific client, the division shall in all cases consider the following factors:

a. Whether the item/model truly is needed for the client to be able to perform the essential functions of the client's job.

b. Whether a more economical item/model is available to permit the client to perform the essential functions of the client's job.

c. Whether other parties or entities may be responsible for providing or contributing to the costs of an item.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

DIVISION VII
SUPERVISOR REVIEW, MEDIATION, HEARINGS, AND APPEALS

281—56.29(259) Review process. At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision or request mediation. The term "appellant" shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant may initiate the appeal process either by calling a counselor or supervisor or by filing the appropriate division appeal form, available from any counselor or supervisor of the division. If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. The division shall accept as an appeal a written letter, facsimile, or electronic mail that indicates that the applicant or client desires to appeal. An appeal must be filed within 90 days of notification of the disputed decision. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation. The appellant may request assistance with an appeal or mediation from the Iowa client assistance program (ICAP).

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.30(259) Supervisor review. As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the assistant bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

56.30(1) Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case/issue; and, if necessary, meet with any or all parties to discuss the dispute.

56.30(2) The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

56.30(3) If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

56.30(4) As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision.

281—56.31(259) Mediation. Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

56.31(1) Mediation shall be conducted by a qualified and impartial mediator, as defined in 34 CFR 361.5(43), trained in effective mediation techniques and selected randomly by the division from a list maintained by the division.

56.31(2) The mediation shall be conducted in a timely manner at a location convenient to the parties.

56.31(3) Mediation shall not be used to delay the appellant's right to a hearing.

56.31(4) Mediation must be voluntary on the part of the appellant and the division.

56.31(5) Mediation is at no cost to the appellant.

56.31(6) All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

56.31(7) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

281—56.32(259) Hearing before impartial hearing officer. Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

56.32(1) The division shall appoint the IHO from the pool of hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

56.32(2) The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

56.32(3) The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

56.32(4) Within five working days after appointment, the IHO shall notify both parties in writing of the following:

a. The role of the IHO;

b. The IHO's understanding of the reasons for the appeal and the requested resolution;

c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;

d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.29(259));

e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;

f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;

g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;

h. Information about the amount of time it will take to complete the hearing process;

i. The possibility of reimbursement of necessary travel and related expenses; and

j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf, as well as transportation or attendant services for those appellants requiring such assistance.

56.32(5) Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

56.32(6) The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought, the IHO's decision shall be implemented pending outcome of the judicial review.

DIVISION VIII
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The following rules are implemented in addition to the department's rules in 281—Chapter 5.

281—56.33(259) Collection and maintenance of records. The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain circumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).
2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).
3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255), as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).
4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).
5. The Government in the Sunshine Act (P.L. 94-409).
6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the client or the client's representative, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

281—56.34(259) Personally identifiable information. This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

56.34(1) *Personnel records.* These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

56.34(2) *Client case records.* An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the client, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

56.34(3) *Client service record computer database.* This database contains personal data items about individual clients. Data identifying the client is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

56.34(4) *Vendor purchase records.* These are records of purchases of goods or services made for the benefit of clients. If the record contains the client's name or other personal identifiers, the record is confidential. Lists of nonclient vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

56.34(5) *Records and transcripts of hearings or client appeals.* These contain personally identifiable information about a client's case, appeal from or for some action, and the decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code subsection 17A.3(1)*"d."* Information is available after confidential personally identifiable information is deleted.

56.34(6) *All computer databases of client and applicant names and other identifiers.* The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

56.34(7) *All computer-generated reports that contain personally identifiable information.* The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

281—56.35(259) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

56.35(1) Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

56.35(2) Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(3) Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

56.35(4) Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

56.35(5) Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

56.35(6) Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

56.35(7) Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or some of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

56.35(8) Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel expenses, and costs of supplies and postage, all of which are available to the public.

56.35(9) Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

56.35(10) Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

56.35(11) All other records that are not exempted from disclosure by law.

DIVISION IX
STATE REHABILITATION COUNCIL

281—56.36(259) State rehabilitation council.

56.36(1) *Composition.* The state rehabilitation council shall be composed of no less than 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities who are not employed by the division. The council members shall include the following:

a. At least one representative of the statewide independent living council, one of whom must be the chairperson or chairperson's designee of that council;

b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;

c. At least one representative of the client assistance program, one of whom must be the director or the director's designee of that program;

d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;

e. At least one representative of community rehabilitation program service providers;

f. Four representatives of business, industry, and labor;

g. Representatives of disability groups that include a cross section of:

(1) Individuals with physical, cognitive, sensory, and mental disabilities; and

(2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;

h. Current or former applicants for, or recipients of, vocational rehabilitation services;

i. At least one representative of the department's bureau of children, family, and community services;

j. At least one representative of the Iowa workforce development board; and

k. The director of the division, who serves as an ex officio, nonvoting member of the council.

56.36(2) *Chairperson.* The chairperson must be selected by the members of the council from among the voting members of the council.

56.36(3) *Terms.* Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

56.36(4) *Vacancies.* The governor shall fill a vacancy in council membership, unless the governor has delegated authority to fill that vacancy to the remaining members of the council.

56.36(5) *Functions.* The council shall perform the following functions:

a. Review and advise the division regarding the performance of the division's responsibilities under this chapter and the Act;

b. In partnership with the division, develop, agree to, and review state goals and priorities;

c. In partnership with the division, evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the federal Secretary of Education when required;

d. Assist in the preparation of the state plan and amendments thereto, applications, reports, needs assessments, and evaluations required by the Act;

e. To the extent feasible, conduct a review and analysis of the effectiveness of and consumer satisfaction with:

(1) The functions performed by the division;

(2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and

(3) The employment outcomes achieved by eligible individuals receiving services from the division, including the availability of health and other employment benefits in connection with those employment outcomes;

f. Prepare and submit to the governor and to the Secretary of Education an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;

g. Coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning and advisory council, and the state workforce development board;

h. Provide for the coordination and establishment of working relationships between the division and the statewide independent living council and centers for independent living within the state;

i. Prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the council to carry out its functions under this rule; and

j. Perform other comparable functions, consistent with the purpose of the Act, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

56.36(6) *Meetings.* The council shall convene at least quarterly in locations open and accessible to the general public, including individuals with disabilities. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

Rule 281—56.36(259) is intended to implement 34 CFR 361.16 and 361.17.

DIVISION X
IOWA SELF-EMPLOYMENT PROGRAM
(a/k/a ENTREPRENEURS WITH DISABILITIES PROGRAM)

281—56.37(259) Purpose. The division of vocational rehabilitation services works in collaboration with the Iowa department for the blind to administer the Iowa self-employment (ISE) program, which is also known as the entrepreneurs with disabilities (EWD) program. The purpose of the program is to provide business development funds in the form of technical assistance (up to $10,000) and financial assistance (up to $10,000) to qualified Iowans with disabilities who start, expand, or acquire a business within the state of Iowa.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.38(259) Eligibility requirements. Clients of the division or the department for the blind may apply for the program. All of the following conditions are also applicable:

1. The division may limit or deny ISE assistance to an applicant who has previously received educational or training equipment from the division through another rehabilitation program when such equipment could be used in the applicant's proposed business.

2. Any equipment purchased for the applicant under this program that is no longer used by the applicant shall be returned to the division.

3. An applicant must demonstrate that the applicant has at least 51 percent ownership in a for-profit business that is actively owned, operated, and managed in Iowa.

4. Recommendation for and approval of financial assistance is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested.

5. In order to receive financial support from the ISE program, the applicant's business plan feasibility study must result in self-sufficiency for the applicant as measured by earnings that equal or exceed 80 percent of substantial gainful activity.

6. The division cannot support the purchase of real estate or improvements to real estate.

7. The division cannot provide funding to be used as a cash infusion, for personal or business loan repayments, or for personal or business credit card debt.

8. The division may deny ISE assistance to an applicant who desires to start, expand, or acquire any of the following types of businesses:

- A hobby or similar activity that does not produce income at the level required for self-sufficiency;
- A business venture that is speculative in nature or considered high risk by the Better Business Bureau or similar organization;
- A business registered with the federal Internal Revenue Service as a Section 501(c)(3) entity or other entity set up deliberately to be not-for-profit;
- A business that is not fully compliant with all local, state, and federal zoning requirements and all other applicable local, state, and federal requirements.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.39(259) Application procedure.

56.39(1) *Application.* Application materials for the program are available from the division and the department for the blind.

56.39(2) *Submittal.* Completed applications shall be submitted to a counselor employed by the division or the department for the blind.

56.39(3) *Review.* Applications will be forwarded to a business development specialist employed by the division for review. Applicants whose applications receive a minimum score of 60 points out of a total of 100 points are eligible to pursue technical assistance funding. Approval of technical assistance funding is based upon the results of a business plan feasibility study. If the application is for financial assistance only, a business plan feasibility study will be required at the time of submission of the application. Applicants whose business plans receive a minimum score of 75 points out of a total of 100 points and a minimum of 15 points per section are eligible to pursue financial assistance funding. Approval of financial assistance funding is based upon acceptance of a business plan feasibility study and documentation of the applicant's ability to match dollar-for-dollar the amount of funds requested. A decision on all applications and forms will generally be issued within 30 days of submission with notification by letter to the applicant.

56.39(4) *Applications for technical assistance—evaluation factors.* Applications for the program will be reviewed and evaluated using a 100-point system, based upon the following criteria:

a. Descriptive and organization information: 0 - 30 points. Does the applicant have education, skills, and work experience relevant to the proposed business venture? Does the applicant document previous management or accounting experience? Does the applicant have a clear understanding of the nature of the business?

b. Market information: 0 - 30 points. Does the application indicate a clear understanding of potential customer groups and how to reach them? Does the application show sufficient knowledge of products/services, competition, and marketing methods? Does the applicant understand the critical issue of location?

c. Financial information: 0 - 30 points. Does the applicant demonstrate an understanding of how to estimate sales potential? Does the applicant indicate knowledge of estimated capital requirements for business start-up, expansion, or acquisition?

d. Creditworthiness: 0 - 10 points. Does the applicant's past credit history demonstrate responsible behavior? Awards will not be made if the applicant has a credit history showing delinquent

credit obligations including, but not limited to, unpaid income tax, delinquent child support obligations, or defaulted student loans.

56.39(5) *Appeal of application evaluation.* If an application is denied based upon the assignment of an inadequate evaluation score, an applicant may appeal the decision to the division or the department for the blind. An appeal shall be consistent with the appeal processes of the division or the department for the blind.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.40(259) Award of technical assistance funds.

56.40(1) *Awards.* Technical assistance funds may be used for specialized consulting services as determined necessary by the counselor, the business development specialist, and the client. Technical assistance funds may be awarded up to a maximum of $10,000 per applicant. Specialized technical assistance may include, but is not limited to, market analysis; marketing plans; engineering, legal, accounting, and computer services; preliminary business plan feasibility study; financial packaging; and other consulting services that require specialized education and training.

56.40(2) *Award process.* Upon approval of the application by the counselor and the business development specialist, generally within 30 days, an applicant will receive notification of eligibility to pursue technical assistance funding. The applicant must demonstrate the ability to cover any technical assistance costs beyond $10,000 if necessary. The business development specialist will identify whether specialized services are needed and will provide recommendation for approval by the division or departmental staff.

56.40(3) *Technical assistance contracts.* The division shall negotiate contracts with qualified consultants for delivery of services to an applicant if specialized services are deemed necessary. The contracts shall state hourly fees for services, the type of service to be provided, and a timeline for delivery of services. Authorization of payment will be made by a counselor employed by the division or the department for the blind based upon the negotiated rate as noted in the contract. A copy of each contract shall be filed with the division.

56.40(4) *Consultants.* Applicants will be provided a list of qualified business consultants by the business development specialist if specialized consultation services are necessary. The selection of the consultant(s) shall be the responsibility of the applicant.

56.40(5) *Case management.* The business development specialist or counselor will be available as needed for direct consultation to each applicant to ensure that quality services for business planning are provided in a timely manner.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.41(259) Business plan feasibility study procedure. Information and materials are available from the division and the department for the blind.

56.41(1) *Submittal.* The client shall submit the client's business plan feasibility study to the client's counselor if the study is completed at the time application is made or to the business development specialist if the business plan feasibility study is completed after application approval.

56.41(2) *Review.* The business plan feasibility study will be reviewed, evaluated, and scored by the business development specialist using a 100-point system. A business plan feasibility study receiving a minimum score of 75 points, with at least 15 points per section, will be recommended for financial assistance funding. Generally, the business development specialist will review the client's business plan feasibility study within 30 days of submission and will make recommendation for next steps to all parties involved.

56.41(3) *Evaluation factors.*

a. Personal sense: 0-20 points. Is the personal credit report sufficient to be considered for financial support or loans? If the credit report documents serious delinquencies or derogatory indicators or remarks, or includes adverse data from public or collection information sources, how have these issues been addressed or resolved? Are there other outstanding debt obligations which have been self-reported? Is there evidence that consideration and solutions/accommodations were given to possible barriers that might result due to disability?

b. *Business sense: 0-20 points.* Does the business plan feasibility study contain a well-written executive summary, business description, and operation and management plan?

c. *Market sense: 0-20 points.* Does the business plan feasibility study include details about market research and analysis as well as a market plan?

d. *Financial sense: 0-20 points.* Does the business plan feasibility study include details of capital requests, projected financials, and, where applicable, historical financials?

e. *Other content area: 0-20 points.* Does the business plan have a title page, table of contents, and appendix containing supporting documents?

56.41(4) *Appeal of denial.* If funding is denied based upon a low evaluation score, an applicant may appeal the decision to the division or department for the blind, consistent with the appeal processes of the agencies.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

281—56.42(259) Award of financial assistance funds.

56.42(1) *Awards.* Following the business development specialist's evaluation and scoring of the business plan feasibility study, the business development specialist will issue a recommendation to support or not to support the proposed business venture. The counselor shall make a decision regarding approval or denial of the recommendation. If approved, the client and counselor will review conditions of the financial assistance award and sign the appropriate forms of acknowledgment.

a. Financial assistance funds may be awarded up to $10,000 based upon an approved business plan feasibility study and evidence of business need or evidence of business progression. Before receiving financial assistance, the client must demonstrate a dollar-for-dollar match based on the amount of funding needed. The match may be provided through approved existing business assets, cash, conventional financing or other approved sources.

b. Financial assistance funds may be approved for, but are not limited to: equipment, tools, printing of marketing materials, advertising, rent (up to six months), direct-mail postage, raw materials, inventory, insurance (up to six months), and other approved start-up, expansion, or acquisition costs.

56.42(2) *Award process.* The amount that may be recommended by the business development specialist and approved by the counselor shall be provided in three phases of business operations, when each phase meets specified business results and when the need for additional financial assistance funding is indicated.

a. The timing of each phase and the amount of funds for each phase should be established in the approved business plan feasibility study, as recommended by the business development specialist and approved by the counselor.

b. Recipients of financial assistance must demonstrate ongoing cooperation by providing the business development specialist with financial information needed to assess business progress before additional funds are expended.

56.42(3) *Financial assistance contracts.* Contracts for financial assistance funds shall be the responsibility of the division and will be consistent with the authorized use of Title I vocational rehabilitation funds and policy.

56.42(4) *Vendors.* Procurement of goods or services shall follow procedures established by the department of administrative services. The type of goods or services to be obtained, as well as a timeline for delivery of such, shall be stated by the vendor and agreed upon by the division. Authorization for goods or services shall be made by a counselor employed by the division or the department for the blind based upon the negotiated rate and terms as noted in the contract. A copy of each contract shall be filed with the division. Approval for payment of authorized goods or services shall be made by authorized division personnel.

[**ARC 8806B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301 et seq.), and 2008 Iowa Acts, Senate File 2101.

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CHAPTER 83
TEACHER AND ADMINISTRATOR QUALITY PROGRAMS

DIVISION I
GENERAL STANDARDS APPLICABLE TO BOTH ADMINISTRATOR AND TEACHER QUALITY PROGRAMS

281—83.1(284,284A) Purposes. The goal of the teacher quality program is to enhance the learning, achievement, and performance of all students through the recruitment, support, and retention of quality Iowa teachers. The program shall contain specific strategies that include a mentoring and induction program for beginning teachers, teacher evaluations, and district and building support for professional development that includes best practice aimed at increasing student achievement.

The goal of the administrator quality program is to promote high student achievement and enhanced educator quality. The program consists of mentoring and induction programs that provide support for administrators, professional development designed to directly support best practice for leadership, and evaluation of administrators against the Iowa standards for school administrators.

281—83.2(284,284A) Definitions. For the purpose of these rules, the following definitions shall apply:

"Administrator" or *"school leader"* means an individual holding a professional administrator license issued under Iowa Code chapter 272, who is employed in a school district administrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.23. An administrator may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time administrator for the portion of time that the individual is employed in an administrative position.

"Beginning administrator" means an individual serving under an initial administrator license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a school district administrator for the first time.

"Beginning teacher" means an individual serving under an initial, Class A, exchange, or intern license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a teacher. For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5, "beginning teacher" also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.

"Comprehensive evaluation" means, with respect to a beginning teacher, a summative evaluation of a beginning teacher conducted by an evaluator for purposes of determining a beginning teacher's level of competency relative to the Iowa teaching standards and for recommendation for licensure based upon models developed pursuant to Iowa Code section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career teacher. With respect to a beginning administrator, "comprehensive evaluation" means a summative evaluation of a beginning administrator conducted by an evaluator in accordance with 2007 Iowa Code Supplement section 284A.3 for purposes of determining a beginning administrator's level of competency for recommendation for licensure based on the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Department" means the department of education.

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

"District facilitator" means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

"Evaluator" means an administrator or other practitioner who successfully completes an evaluator training program pursuant to Iowa Code section 284.10.

"Intensive assistance" means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

"Leadership standards" are synonymous with the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27).

"Mentor" means, with respect to a beginning teacher, an individual employed by a school district or area education agency as a teacher or a retired teacher who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice, must be employed on a nonprobationary basis, and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers. With respect to a beginning administrator, "mentor" means an individual employed by a school district or area education agency as a school district administrator or a retired administrator who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful administrative experience and must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning administrators.

"Performance review" means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher's practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher's practice meets school district expectations for career advancement in accordance with Iowa Code section 284.7.

"School board" means the board of directors of a school district, a collaboration of boards of directors of school districts, or the board of directors of an area education agency, as the context requires.

"School district" means a public school district.

"State board" means the state board of education.

"Teacher" means an individual holding a practitioner's license or a statement of professional recognition issued under Iowa Code chapter 272, who is employed in a nonadministrative position by a school district or area education agency pursuant to a contract issued by a board of directors under Iowa Code section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09]

DIVISION II
SPECIFIC STANDARDS APPLICABLE TO TEACHER QUALITY PROGRAMS

281—83.3(284) Mentoring and induction program for beginning teachers.

83.3(1) *Purpose.* The beginning teacher mentoring and induction program is created to promote excellence in teaching, enhance student achievement, build a supportive environment within school districts and area education agencies, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

83.3(2) *Participation.* All school districts and area education agencies shall provide a beginning teacher mentoring and induction program for all beginning teachers. A beginning teacher, as defined in this chapter, shall be informed by the school district or area education agency, prior to the beginning teacher's participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district or area education agency. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher's second year of teaching to determine whether the teacher meets expectations to move to the career level. The school district or area education agency shall recommend for a standard license a beginning teacher who has successfully met the Iowa teaching standards as determined by a comprehensive evaluation.

If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a school district or area education agency prior to completion of the program, the school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited nonpublic school or in another state as a

first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district's or area education agency's expense. A teacher granted a third year of eligibility shall, in cooperation with the teacher's evaluator, develop a plan to meet the Iowa teaching standards and district or area education agency career expectations. This plan will be implemented by the teacher and supported through the district's or area education agency's mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district's program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284). A school district or area education agency shall participate in state program evaluations.

83.3(3) *Plan.* Each school district or area education agency shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district's comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection 21. A school district or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board's discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district's or area education agency's beginning teacher mentoring and induction program shall include, but are not limited to, the following:

a. Goals for the program.

b. A process for the selection of mentors.

c. A mentor training process which shall:

(1) Be consistent with effective staff development practices and adult professional needs to include skills needed for teaching, demonstration, and coaching.

(2) Address mentor needs, indicating a clear understanding of the role of the mentor.

(3) Result in the mentor's understanding of the personal and professional needs of new teachers.

(4) Provide the mentor with an understanding of the district expectations for beginning teacher competencies based on the Iowa teaching standards.

(5) Facilitate the mentor's ability to provide guidance and support to new teachers.

d. A supportive organizational structure for beginning teachers which shall include:

(1) Activities that provide access and opportunities for interaction between mentor and beginning teacher that at a minimum provide:

1. Released time for mentors and beginning teachers to plan;
2. The demonstration of classroom practices;
3. The observation of teaching; and
4. Feedback.

(2) Selection process for who will be in the mentor/beginning teacher partnership.

(3) Roles and responsibilities of the mentor.

e. Evaluation process for the program, which shall include:

(1) An evaluation of the district and area education agency program goals,

(2) An evaluation process that provides for the minor and major program revisions, and

(3) A process for how information about the program will be provided to interested stakeholders.

f. The process for dissolving mentor and beginning teacher partnerships.

g. A plan that reflects the needs of the beginning teacher employed by the district or area education agency.

h. Activities designed to support beginning teachers by:

(1) Developing and enhancing competencies for the Iowa teaching standards, and

(2) Providing research-based instructional strategies.

83.3(4) *Budget.* Funds received by a school district or area education agency from the beginning teacher mentoring and induction program shall be used for any or all of the following purposes:

a. To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of $500 per semester for full participation in the program. A district or area education agency may use local dollars to increase the mentor award.

b. To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district or area education agency.

These funds are miscellaneous funds or are considered encumbered. A school district or area education agency shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

281—83.4(284) Iowa teaching standards and criteria. The Iowa teaching standards and supporting criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective teaching. The purpose of the standards and supporting criteria is to provide Iowa school districts and area education agencies with a consistent representation of the complexity and the possibilities of quality teaching. The standards shall serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with supporting criteria is outlined as follows:

83.4(1) Demonstrates ability to enhance academic performance and support for and implementation of the school district's student achievement goals.

a. The teacher:

(1) Provides multiple forms of evidence of student learning and growth to students, families, and staff.

(2) Implements strategies supporting student, building, and district goals.

(3) Uses student performance data as a guide for decision making.

(4) Accepts and demonstrates responsibility for creating a classroom culture that supports the learning of every student.

(5) Creates an environment of mutual respect, rapport, and fairness.

(6) Participates in and contributes to a school culture that focuses on improved student learning.

(7) Communicates with students, families, colleagues, and communities effectively and accurately.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses knowledge and understanding of the area education agency's mission, goals, and strategic priorities to provide services that enhance academic performance.

(2) Understands and uses knowledge of area education agency and district goals and data to provide services that enhance academic performance.

(3) Participates in and contributes to a positive learning culture.

(4) Communicates with students, families, colleagues, and communities effectively and accurately.

(5) Uses area education agency, district, and student data as a guide for decision making.

83.4(2) Demonstrates competence in content knowledge appropriate to the teaching position.

a. The teacher:

(1) Understands and uses key concepts, underlying themes, relationships, and different perspectives related to the content area.

(2) Uses knowledge of student development to make learning experiences in the content area meaningful and accessible for every student.

(3) Relates ideas and information within and across content areas.

(4) Understands and uses instructional strategies that are appropriate to the content area.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Understands, communicates, and uses key concepts and best practice in fulfillment of area education agency roles and responsibilities.

(2) Uses knowledge of child and adolescent development and of adult learning to make interventions and strategies meaningful, relevant, and accessible.

(3) Relates professional knowledge and services within and across multiple content and discipline areas.

(4) Understands and supports strategies and interventions that are best practice across content and discipline areas.

83.4(3) Demonstrates competence in planning and preparing for instruction.

a. The teacher:

(1) Uses student achievement data, local standards, and the district curriculum in planning for instruction.

(2) Sets and communicates high expectations for social, behavioral, and academic success of all students.

(3) Uses students' developmental needs, backgrounds, and interests in planning for instruction.

(4) Selects strategies to engage all students in learning.

(5) Uses available resources, including technologies, in the development and sequencing of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates the ability to organize and prioritize time, resources, and responsibilities.

(2) Demonstrates the ability to individually and collaboratively plan and prepare professional services that address the range of district, teacher, parent, and student needs.

(3) Uses district and student data to develop goals and interventions.

(4) Demonstrates the flexibility to plan for professional services based on changing conditions of the work context and environment.

(5) Uses available resources, including technology, to plan and develop professional services.

83.4(4) Uses strategies to deliver instruction that meets the multiple learning needs of students.

a. The teacher:

(1) Aligns classroom instruction with local standards and district curriculum.

(2) Uses research-based instructional strategies that address the full range of cognitive levels.

(3) Demonstrates flexibility and responsiveness in adjusting instruction to meet student needs.

(4) Engages students in varied experiences that meet diverse needs and promote social, emotional, and academic growth.

(5) Connects students' prior knowledge, life experiences, and interests in the instructional process.

(6) Uses available resources, including technologies, in the delivery of instruction.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Aligns service delivery to district, teacher, parent, and student needs.

(2) Provides consultation, instruction, interventions, and strategies that align with learner needs.

(3) Demonstrates flexibility and responsiveness in adjusting services to meet diverse learner needs.

(4) Uses and supports research-based and evidence-based practices to meet learner needs.

(5) Uses available resources, including technology, to provide professional services that meet learner needs.

83.4(5) Uses a variety of methods to monitor student learning.

a. The teacher:

(1) Aligns classroom assessment with instruction.

(2) Communicates assessment criteria and standards to all students and parents.

(3) Understands and uses the results of multiple assessments to guide planning and instruction.

(4) Guides students in goal setting and assessing their own learning.

(5) Provides substantive, timely, and constructive feedback to students and parents.

(6) Works with other staff and building and district leadership in analysis of student progress.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Uses appropriate assessment, data collection, and data analysis methods that support alignment of services with learner needs.

(2) Works collaboratively within the learning community to establish measurable goals and to identify formative and summative methods to monitor progress and the quality of implementation.

(3) Communicates the rationale and criteria of assessment and monitoring methods.

(4) Elicits and provides timely and quality feedback on assessment and monitoring.

83.4(6) Demonstrates competence in classroom management.

a. The teacher:

(1) Creates a learning community that encourages positive social interaction, active engagement, and self-regulation for every student.

(2) Establishes, communicates, models, and maintains standards of responsible student behavior.

(3) Develops and implements classroom procedures and routines that support high expectations for student learning.

(4) Uses instructional time effectively to maximize student achievement.

(5) Creates a safe and purposeful learning environment.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Models respectful dialogue and behaviors within and across job responsibilities.

(2) Promotes and maintains a positive, safe, and productive environment.

(3) Works collaboratively and is flexible.

(4) Communicates accurately and effectively.

83.4(7) Engages in professional growth.

a. The teacher:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practice and student learning.

(3) Applies research, knowledge, and skills from professional development opportunities to improve practice.

(4) Establishes and implements professional development plans based upon the teacher's needs aligned to the Iowa teaching standards and district/building student achievement goals.

(5) Provides an analysis of student learning and growth based on teacher-created tests and authentic measures as well as any standardized and districtwide tests.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Demonstrates habits and skills of continuous inquiry and learning.

(2) Works collaboratively to improve professional practices.

(3) Applies and shares research, knowledge, and skills from professional development.

(4) Establishes and implements professional development plans aligned to area education agency, district, and student learning goals.

83.4(8) Fulfills professional responsibilities established by the school district.

a. The teacher:

(1) Adheres to board policies, district procedures, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and district policy.

(3) Contributes to efforts to achieve district and building goals.

(4) Demonstrates an understanding of and respect for all learners and staff.

(5) Collaborates with students, families, colleagues, and communities to enhance student learning.

b. Alternative criteria for area education agency staff who meet the definition of "teacher" herein. The staff member:

(1) Adheres to board policies, area education agency procedures, federal and state rules, and contractual obligations.

(2) Demonstrates professional and ethical conduct as defined by state law and area education agency policies.

(3) Contributes to efforts to achieve area education agency goals.

(4) Demonstrates an understanding of and respect for all learners.

(5) Collaborates with all learners.

83.4(9) The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284). A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, additional teaching standards and criteria for use in a performance review. In any school district or area education agency where there is no certified bargaining unit, additional standards and criteria may be determined by the board.

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10]

281—83.5(284) Evaluator approval training. The department shall approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department shall qualify for evaluator certification by the board of educational examiners. A beginning teacher who has evaluator certification from the board of educational examiners shall not evaluate other teachers until the beginning teacher is no longer a probationary employee. Approved evaluator training programs shall be designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews as required by Iowa Code chapter 284, and provide for the evaluation of the progress made on individual professional development plans. This training for evaluators shall incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

83.5(1) *Application requirements for providers of evaluator approval training.* Approved applications for the provision of evaluator approval training shall include, but are not limited to, the following components:

a. A curriculum that addresses participant skill development in the areas of:

(1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;

(2) The use of multiple forms of data collection for identifying and supporting performance and development;

(3) The understanding and development of conferencing and feedback skills; and

(4) The development of skills in data-based decision making.

b. Demonstration that the evaluator approval training process design provides training as specified in this rule.

c. A description of the process used to deliver the training to participants.

d. A description of the procedures developed to certify the skill attainment of the evaluator being trained.

e. A budget.

f. Staff qualifications.

g. Evidence of the provider's expertise in evaluation design and training processes.

h. Provisions for leadership to support and implement ongoing professional development focused on student learning.

i. A process that evaluates the effectiveness of the implementation of the training process and demonstrates that the trainees have attained the knowledge and skills as described in paragraph *"a."* This evaluation shall be conducted on an annual basis and submitted to the department.

83.5(2) *Process used for the approval of evaluator approval training program applications.* Eligible providers shall submit an application on forms prescribed by the department. Applications for new

providers will be accepted and reviewed by the department by July 1 of each year. A review panel shall be convened to review applications for evaluator approval training programs based on the requirements listed in subrule 83.5(1). The panel shall recommend for approval and the department shall approve the evaluator approval training programs that meet the requirements listed in subrule 83.5(1). Applicants shall be notified of their status within 30 days of the application deadline. An approved list of private providers shall be maintained on the department Web site with an annual notification to school districts and area education agencies of the Web site address that contains provider information.

Eligible providers may be public or private entities, including, but not limited to, school districts, consortia, and other public or private entities including professional organizations. Applicants shall meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner preparation institutions shall meet the review process through the state board approval and accreditation process for these institutions.

83.5(3) *Local teacher evaluation plans.* Local districts and area education agencies shall develop and implement a teacher evaluation plan that contains the following components:

a. The use of the Iowa teaching standards and criteria;

b. Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and the use of the comprehensive evaluation instrument developed by the department;

c. Provisions for the performance reviews of teachers other than beginning teachers once every three years that include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria if established under subrule 83.4(9), a review of the implementation of the teacher's individual professional development plan, and supporting documentation from other evaluators, teachers, parents, and students;

d. Provisions for individual professional development plans for teachers other than beginning teachers;

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(8) or any other standards or criteria established by a collective bargaining agreement.

A local school board and its certified bargaining representative shall negotiate, pursuant to Iowa Code chapter 20, evaluation and grievance procedures for beginning teachers and for teachers other than beginning teachers that are not in conflict with Iowa Code chapter 284. If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(8) or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.

[**ARC 7785B**, IAB 5/20/09, effective 6/24/09]

281—83.6(284) Professional development for teachers.

83.6(1) *Individual teacher professional development plan.* Each school district and area education agency shall support the development and implementation of the individual teacher professional development plan for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective professional development. At a minimum, the goals for an individual teacher professional development plan must be based on the relevant Iowa teaching standards that support the student achievement goals of the teacher's classroom or classrooms, attendance center and school district or area education agency, as appropriate, as outlined in the comprehensive school improvement plan, and the needs of the teacher. The goals shall go beyond those required under the attendance center professional development plan described in subrule 83.6(2), paragraph *"c."* The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined or area education agency-determined content to

the extent possible. The individual plan shall be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting shall be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

83.6(2) *Professional development for school districts and area education agencies.* The following requirements shall apply to professional development for school districts and area education agencies.

a. District or area education agency professional development plan. Each school district shall incorporate the district professional development plan into its comprehensive school improvement plan pursuant to Iowa Code subsection 284.6(3). Each area education agency shall develop a professional development plan for the agency as a whole and shall incorporate the same into its comprehensive improvement plan pursuant to rule 281—72.9(273). The district or area education agency professional development plan shall be a long-term plan designed and implemented to increase student achievement and shall include all site and district or area education agency personnel responsible for instruction. The district or area education agency professional development plan shall contain, but not be limited to, the following:

(1) Documentation that the professional development is based on student data and other needs assessment; aligned with district student achievement goals; and focused on instruction, curriculum, and assessment.

(2) Documentation that professional development learning opportunities are research-based and aligned with the Iowa teaching standards and criteria.

(3) Identification of the approved professional development provider(s).

(4) A description of a process that includes theory, demonstration, practice, observation, collaboration, and the study of implementation.

(5) A description of a program evaluation design for formative and summative evaluation processes.

b. Professional development standards. Implementation of a school district's or area education agency's professional development plan shall meet the following standards:

(1) Align with the Iowa teaching standards and criteria;

(2) Deliver research-based instructional strategies aligned with the student achievement goals established by the district;

(3) Deliver professional development training and learning opportunities that are targeted at instructional improvement and designed with the following components:

1. Student achievement data and analysis;
2. Theory;
3. Classroom demonstration and practice;
4. Observation and reflection;
5. Teacher collaboration and study of implementation; and
6. Integration of instructional technology, if applicable;

(4) Include an evaluation component of professional development that documents the improvement in instructional practice and the effect on student learning; and

(5) Support the professional development needs of district licensed staff responsible for instruction.

c. Attendance center professional development plans. Each attendance center within a school district shall develop an attendance center professional development plan as a means of promoting group professional development. An attendance center professional development plan shall further the needs of the teachers in the attendance center and shall enhance the student achievement goals of the attendance center and the goals of the district.

d. Individual professional development plans. The school district and area education agency shall support the development and implementation of the individual teacher professional development plan for each teacher as outlined in subrule 83.6(1). Each individual teacher professional development plan shall align to the fullest extent possible with the district professional development plan.

e. Beginning teacher mentoring and induction. The school district shall support the development and implementation of a beginning teacher mentoring and induction plan as outlined in subrule 83.3(3). The district beginning teacher mentoring and induction plan shall be included in the comprehensive

school improvement plan submitted pursuant to Iowa Code section 256.7(21), paragraph *"a,"* and shall align with the district professional development plan described in subrule 83.6(2), paragraph *"a."*

f. Organizational support for professional development. The school district shall provide resources and support for the district professional development plan, including professional development provider(s), time for collaborative work of staff, budget, policies, and procedures.

83.6(3) *Professional development provider requirements.*

a. A provider may be a school district, an area education agency, a higher education institution, a public or private entity including a professional organization that provides long-term, ongoing support of the district's or area education agency's professional development plan, or a consortium of any of the foregoing. An educational organization or program with specific professional development accreditation or approval from the department is an approved provider.

b. Provider approval procedures must be followed to approve providers identified in the district's or area education agency's professional development plan that are not currently accredited or approved through state accreditation procedures. The potential provider must submit to the school district a written application that provides the following documentation:

(1) How the provider will deliver technical assistance that meets the Iowa professional development standards provided in subrule 83.6(2), paragraph *"b."*

(2) How the provider intends to assist the local district in designing, implementing, and evaluating professional development that meets the requirements established in subrule 83.6(2), paragraph *"a."*

(3) A description of the qualifications of the provider.

(4) Evidence of the provider's expertise in professional development.

(5) A budget.

(6) Procedures for evaluating the effectiveness of the technical assistance delivered by the provider.

[**ARC 8808B**, IAB 6/2/10, effective 7/7/10]

281—83.7(284) Teacher quality committees. Each school district and area education agency shall create a teacher quality committee pursuant to 2007 Iowa Code Supplement section 284.4. The committee is subject to the requirements of the Iowa open meetings law (Iowa Code chapter 21). To the extent possible, committee membership shall have balanced representation with regard to gender. The committee shall do all of the following:

1. Monitor the implementation of the requirements of statutes and administrative code provisions relating to this chapter, including requirements that affect any agreement negotiated pursuant to Iowa Code chapter 20.

2. Monitor the evaluation requirements of this chapter to ensure evaluations are conducted in a fair and consistent manner throughout the school district or agency. In addition to any negotiated evaluation procedures, develop model evidence for the Iowa teaching standards and criteria. The model evidence will minimize paperwork and focus on teacher improvement. The model evidence will determine which standards and criteria can be met through observation and which evidence meets multiple standards and criteria.

3. Determine, following the adoption of the Iowa professional development model by the state board of education, the use and distribution of the professional development funds distributed to the school district or agency as provided in 2007 Iowa Code Supplement section 284.13, subsection 1, paragraph *"d,"* based upon school district or agency, attendance center, and individual teacher professional development plans.

4. Monitor the professional development in each attendance center to ensure that the professional development meets school district or agency, attendance center, and individual teacher professional development plans.

5. Ensure the agreement negotiated pursuant to Iowa Code chapter 20 determines the compensation for teachers on the committee for work responsibilities required beyond the normal workday.

6. Make recommendations to the school board and the certified bargaining representative regarding the expenditures of market factor incentives.

DIVISION III
SPECIFIC STANDARDS APPLICABLE TO ADMINISTRATOR QUALITY PROGRAMS

281—83.8(284A) Administrator quality program. An administrator quality program is established to promote high student achievement and enhanced educator quality. The program shall consist of the following four major components:

1. Adherence to the Iowa school leadership standards and criteria as the minimum basis for evaluations of administrators and as the basis for professional development plans for administrators.
2. Mentoring and induction programs that provide support for administrators in accordance with 2007 Iowa Code Supplement section 284A.5.
3. Professional development designed to directly support best practice for leadership.
4. Evaluation of administrators against the Iowa standards for school administrators.

281—83.9(284A) Mentoring and induction program for administrators.

83.9(1) *Purpose.* A beginning administrator mentoring and induction program is created to promote excellence in school leadership, improve classroom instruction, enhance student achievement, build a supportive environment within school districts, increase the retention of promising school leaders, and promote the personal and professional well-being of administrators.

83.9(2) *District participation.* Each school board shall establish an administrator mentoring program for all beginning administrators. The school board may adopt the model program developed by the department or develop the program locally. Each school board's beginning administrator mentoring and induction program shall, at a minimum, provide for one year of programming to support the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and to support beginning administrators' professional and personal needs. Each school board shall include in the program the mentor selection process, supports for beginning administrators, and the organizational and collaborative structures. Each district must also provide the budget, establish a process for sustainability of the program, and establish a process for program evaluation. The school board employing an administrator shall determine the conditions and requirements of an administrator participating in a program established pursuant to this rule. A school board shall include its plan in the school district's comprehensive school improvement plan.

83.9(3) *Recommendation for licensure.* By the end of a beginning administrator's first year of employment, the beginning administrator shall be comprehensively evaluated to determine if the administrator meets expectations to move to a professional administrator license. The school district or area education agency shall recommend the beginning administrator for a professional administrator license to the board of educational examiners upon the administrator's completion of a successful comprehensive evaluation. The evaluation process must include documented evidence of the administrator's competence in meeting the Iowa leadership standards. A school district or area education agency may allow a beginning administrator a second year to demonstrate competence in the Iowa standards for school administrators if, after conducting a comprehensive evaluation, the school district or area education agency determines that the administrator is likely to successfully demonstrate competence in the Iowa standards for school administrators by the end of the second year. Upon notification by the school district or area education agency, the board of educational examiners shall grant a beginning administrator who has been allowed a second year to demonstrate competence a one-year extension of the beginning administrator's initial license. An administrator granted a second year to demonstrate competence shall undergo a comprehensive evaluation at the end of the second year.

281—83.10(284A) Iowa school leadership standards and criteria for administrators. The Iowa school leadership standards and criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective leadership. The standards and criteria provide school districts with a consistent basis for evaluations of administrators and serve as the basis for professional development plans for administrators. A local school board may establish additional administrator standards and related criteria, but shall at a minimum utilize the following standards, with supporting

criteria listed after each, in evaluating its school leaders and adopting individual professional development plans therefor:

83.10(1) *Shared vision.* An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The administrator:

a. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs.

b. Uses research and best practice in improving the educational program.

c. Articulates and promotes high expectations for teaching and learning.

d. Aligns and implements the educational program, plans, actions, and resources with the district's vision and goals.

e. Provides leadership for major initiatives and efforts to effectuate change.

f. Communicates effectively with various stakeholders regarding progress with school improvement plan goals.

83.10(2) *Culture of learning.* An educational leader promotes the success of all students by advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional development. The administrator:

a. Provides leadership for assessing, developing, and improving the climate and culture of learning.

b. Systematically and fairly recognizes and celebrates accomplishments of staff and students.

c. Provides leadership, encouragement, opportunities, and structure for staff to continually design more effective teaching and learning experiences for all students.

d. Monitors and evaluates the effectiveness of curriculum, instruction, and assessment.

e. Evaluates staff and provides ongoing coaching for improvement.

f. Ensures that staff members have professional development that directly enhances their performance and improves student learning.

g. Uses current research and theory about effective schools and leadership to develop and revise the administrator's professional growth plan.

h. Promotes collaboration with all stakeholders.

i. Is easily accessible and approachable to all stakeholders.

j. Is highly visible and engaged in the school community.

k. Articulates the desired school culture and shows evidence about how it is reinforced.

83.10(3) *Management.* An educational leader promotes the success of all students by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment. The administrator:

a. Complies with state and federal mandates and local school board policies.

b. Recruits, selects, inducts, and retains staff to support quality instruction.

c. Addresses current and potential issues in a timely manner.

d. Manages fiscal and physical resources responsibly, efficiently, and effectively.

e. Protects instructional time by designing and managing operational procedures to maximize learning.

f. Communicates effectively with both internal and external audiences about the operations of the school.

83.10(4) *Family and community.* An educational leader promotes the success of all students by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources. The administrator:

a. Engages family and community by promoting shared responsibility for student learning and support of the educational system.

b. Promotes and supports a structure for family and community involvement in the educational system.

c. Facilitates the connections of students and families to the health and social services that support a focus on learning.

d. Collaboratively establishes a culture that welcomes and honors families and community and seeks ways to engage them in student learning.

83.10(5) *Ethics.* An educational leader promotes the success of all students by acting with integrity and fairness and in an ethical manner. The administrator:

a. Demonstrates ethical and professional behavior.

b. Demonstrates values, beliefs, and attitudes that inspire others to higher levels of performance.

c. Fosters and maintains caring professional relationships with staff.

d. Demonstrates appreciation for and sensitivity to diversity in the school community.

e. Is respectful of divergent opinions.

83.10(6) *Societal context.* An educational leader promotes the success of all students by understanding the profile of the community and by responding to and influencing the larger political, social, economic, legal, and cultural context. The administrator:

a. Collaborates with service providers and other decision makers to improve teaching and learning.

b. Advocates for the welfare of all members of the learning community.

c. Designs and implements appropriate strategies to reach desired goals.

281—83.11(284A) Evaluation. The board of directors of a school district shall conduct an evaluation of an administrator who holds a professional administrator license issued under Iowa Code chapter 272 at least once every three years for purposes of assisting the administrator in making continuous improvements, documenting continued competence in the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and determining whether the administrator's practice meets the board's expectations for the school district. The review shall include, at a minimum, an assessment of the administrator's competence in meeting the Iowa standards for school administrators and the goals of the administrator's individual professional development plan, including supporting documentation or artifacts aligned to the Iowa standards for school administrators and the individual administrator's professional development plan.

281—83.12(284A) Professional development of administrators.

83.12(1) *Responsibility of district.* Each school district shall be responsible for the provision of professional growth programming for individuals employed in a school district administrative position by the school district or area education agency as deemed appropriate by the board of directors of the school district or area education agency. School districts may collaborate with other educational stakeholders, including other school districts, area education agencies, professional organizations, higher education institutions, and private providers, regarding the provision of professional development for school district administrators. Professional development programming for school district administrators may include support that meets the individual administrator's professional development needs as aligned to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and that meets individual administrator professional development plans.

83.12(2) *Individual plans.* In cooperation with the administrator's evaluator, an administrator who has a standard administrator's license issued by the board of educational examiners pursuant to Iowa Code chapter 272 and is employed by a school district or area education agency in a school district administrative position shall develop an individual administrator professional development plan. The purpose of the plan is to promote individual and group professional development. The individual plan shall be based, at a minimum, on the needs of the administrator. The individual plan shall be aligned, as appropriate, to the Iowa standards for school administrators adopted pursuant to 2007 Iowa Code Supplement section 256.7(27), and the student achievement goals of the attendance center and the school district as set forth in the comprehensive school improvement plan.

83.12(3) *Role of evaluator.* The administrator's evaluator shall meet annually as provided in Iowa Code section 279.23A with the administrator to review progress in meeting the goals in the administrator's individual professional development plan. The purpose of the meeting shall be to review collaborative work with other staff on student achievement goals and to modify as necessary the administrator's individual professional development plan to reflect the individual administrator's

and the school district's needs and the administrator's progress in meeting the goals in the plan. The administrator shall provide evidence of progress toward meeting the goals. Modifications to the plan may be made jointly by the administrator and the administrator's supervisor, or the supervisor may adjust the plan. Any changes in the plan made unilaterally by a supervisor must be clearly documented for the administrator.

These rules are intended to implement Iowa Code chapters 284 and 284A as amended by 2007 Iowa Acts, chapter 108.

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CHAPTER 11
COMPLAINTS, INVESTIGATIONS, CONTESTED CASE HEARINGS

[Prior to 6/15/88, see Professional Teaching Practices Commission[640] Ch 2]
[Prior to 5/16/90, see Professional Teaching Practices Commission[287] Ch 2]

282—11.1(17A,272) Scope and applicability. This chapter applies to contested case proceedings conducted by the board of educational examiners.

282—11.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board" means the board of educational examiners.

"Complainant" means any qualified party who files a complaint with the board.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means an administrative law judge from the Iowa department of inspections and appeals or the full board or a three-member panel of the board.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full board did not preside.

"Respondent" means any individual who is charged in a complaint with violating the criteria of professional practices or the criteria of competent performance.

282—11.3(17A,272) Jurisdictional requirements.

11.3(1) The case must relate to alleged violation of the criteria of professional practices or the criteria of competent performance.

11.3(2) The magnitude of the alleged violation must be adequate to warrant a hearing by the board.

11.3(3) There must be sufficient evidence to support the complaint.

11.3(4) The complaint must be filed by a person who has personal knowledge of an alleged violation and must include a concise statement of facts which clearly and specifically apprises the respondent of the details of the allegation(s).

11.3(5) The complaint must be filed within three years of the occurrence of the conduct upon which it is based or discovery of the conduct by the complainant unless good cause can be shown for extension of this limitation.

11.3(6) The jurisdictional requirements must be met on the face of the complaint before the board may order an investigation of the allegation(s) of the complaint.

11.3(7) As an additional factor, it should appear that a reasonable effort has been made to resolve the problem on the local level. However, the absence of such an effort shall not preclude investigation by the board.

282—11.4(17A,272) Complaint.

11.4(1) *Who may initiate.* The following entities may initiate a complaint:

a. Licensed practitioners employed by a school district or their educational entity or their recognized local or state professional organization.

b. Local boards of education.

c. Parents or guardians of students involved in the alleged complaint.

d. The executive director of the board of educational examiners if the following circumstances have been met:

(1) The executive director receives information that a practitioner:

1. Has been convicted of a felony criminal offense, or a misdemeanor criminal offense wherein the victim of the crime was 18 years of age or younger, and the executive director expressly determines

within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

2. Has been the subject of a founded report of child abuse placed upon the central registry maintained by the department of human services pursuant to Iowa Code section 232.71D and the executive director expressly determines within the complaint that the nature of the offense clearly and directly impacts the practitioner's fitness or ability to retain the specific license(s) or authorization(s) which the practitioner holds; or

3. Has not met a reporting requirement stipulated by Iowa Code section 272.15 as amended by 2007 Iowa Acts, Senate File 588, section 33, Iowa Code section 279.43, 281—subrule 102.11(2), 282—Chapter 11, or 282—Chapter 25; or

4. Has falsified a license or authorization issued by the board; or

5. Has submitted false information on a license or authorization application filed with the board; or

6. Does not hold the appropriate license for the assignment for which the practitioner is currently employed; or

7. Has assigned another practitioner to perform services for which the practitioner is not properly licensed; and

(2) The executive director verifies the information or the alleged misconduct through review of official records maintained by a court, the department of human services registry of founded child abuse reports, the practitioner licensing authority of another state, the department of education, the local school district, area education agency, or authorities in charge of the nonpublic school, or the executive director is presented with the falsified license; and

(3) No other complaint has been filed.

e. The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor's certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver's education instruction.

f. An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.

11.4(2) *Form and content of the complaint.*

a. The complaint shall be in writing and signed by at least one complainant who has personal knowledge of an alleged violation of the board's rules or related state law or an authorized representative if the complainant is an organization. (An official form may be used. This form may be obtained from the board upon request.)

b. The complaint shall show venue as "BEFORE THE BOARD OF EDUCATIONAL EXAMINERS" and shall be captioned "COMPLAINT."

c. The complaint shall contain the following information:

(1) The full name, address and telephone number of the complainant.

(2) The full name, address and telephone number, if known, of the respondent.

(3) A concise statement of the facts which clearly and specifically apprises the respondent of the details of the alleged violation of the criteria of professional practices or the criteria of competent performance and the relief sought by the complainant.

(4) An explanation of the basis of the complainant's personal knowledge of the facts underlying the complaint.

(5) A citation to the specific rule or law which the complainant alleges has been violated.

11.4(3) *Required copies—place and time of filing the complaint.*

a. A copy of the complaint must be filed with the board.

b. The complaint must be delivered personally or by mail to the office of the board. The current office address is the Grimes State Office Building, Third Floor, Des Moines, Iowa 50319-0147.

c. Timely filing is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay. The conduct upon which it is based must have occurred or been discovered by the complainant within three years of filing of the complaint unless good cause is shown for an extension of this limitation.

11.4(4) *Amendment or withdrawal of complaint.* A complaint or any specification thereof may be amended or withdrawn by the complainant at any time. The parties to a complaint may mutually agree to the resolution of the complaint at any time in the proceeding prior to issuance of a final order by the board. The resolution must be committed to a written agreement and filed with the board. The agreement is not subject to approval by the board, but shall be acknowledged by the board and may be incorporated into an order of the board.

11.4(5) *Respondent entitled to copy of the complaint.* Immediately upon the board's determination that jurisdictional requirements have been met, the respondent shall be provided a copy of the complaint or amended complaint and any supporting documents attached to the complaint at the time of filing.

11.4(6) *Voluntary surrender of license—agreement to accept lesser sanction.* A practitioner may voluntarily surrender the practitioner's license or agree to accept a lesser sanction from the board prior to or after the filing of a complaint with the board without admitting the truth of the allegations of the complaint if a complaint is on file with the board. In order to voluntarily surrender a license or submit to a sanction, the practitioner must waive the right to hearing before the board and notify the board of the intent to surrender or accept sanction. The board may issue an order permanently revoking the practitioner's license if it is surrendered, or implementing the agreed upon sanction. The board may decline to issue an agreed upon sanction if, in the board's judgment, the agreed upon sanction is not appropriate for the circumstances of the case.

11.4(7) *Investigation of license reports.*

a. Reports received by the board from another state, territory or other jurisdiction concerning licenses or certificate revocation or suspension shall be reviewed and investigated by the board in the same manner as is prescribed in these rules for the review and investigation of written complaints.

b. Failure to report a license revocation, suspension or other disciplinary action taken by licensing authority of another state, territory or jurisdiction within 30 days of the final action by such licensing authority shall constitute cause for initiation of an investigation.

11.4(8) *Timely resolution of complaints.* Complaints filed with the board must be resolved within 180 days unless good cause can be shown for an extension of this limitation. The board will provide notice to the parties to a complaint prior to taking action to extend this time limitation upon its own motion.

11.4(9) *Confidentiality.* All complaint files, investigation files, other investigation reports, and other investigation information in the possession of the board or its employees or agents, which relate to licensee discipline, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for their release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and are not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline. However, investigative information in the possession of the board or its employees or agents which is related to licensee discipline may be disclosed to appropriate licensing authorities within this state, the appropriate licensing authorities in another state, the District of Columbia, or a territory or country in which the licensee is licensed or has applied for a license. A final written decision and finding of fact by the board in a disciplinary proceeding is a public record.

[**ARC 8406B**, IAB 12/16/09, effective 1/20/10 (See Delay note at end of chapter); **ARC 8823B**, IAB 6/2/10, effective 5/14/10]

282—11.5(272) Investigation of complaints or license reports. The chairperson of the board or the chairperson's designee may request an investigator to investigate the complaint or report received by the board from another state, territory or other jurisdiction concerning license or certificate revocation or suspension pursuant to subrule 11.4(7); providing that the jurisdictional requirements have been met on the face of the complaint. The investigation shall be limited to the allegations contained on the face of the complaint. The investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. Upon completion of the investigation, the investigator shall prepare a report of the investigation for consideration by the board in determining whether probable cause exists.

282—11.6(272) Ruling on the initial inquiry. Upon review of the investigator's report, the board may take any of the following actions:

11.6(1) *Reject the case.* If a determination is made by the board to reject the case, the complaint shall be returned to the complainant along with a statement specifying the reasons for rejection. A letter of explanation concerning the decision of the board shall be sent to the respondent.

11.6(2) *Require further inquiry.* If determination is made by the board to order further inquiry, the complaint and recommendations by the investigator(s) shall be returned to the investigator(s) along with a statement specifying the information deemed necessary.

11.6(3) *Accept the case.* If a determination is made by the board that probable cause exists to conclude that the criteria of professional practices or the criteria of competent performance have been violated, notice shall be issued, pursuant to rule 282—11.7(17A,272), and a formal hearing shall be conducted in accordance with rules 282—11.7(17A,272) to 282—11.21(17A,272), unless a voluntary waiver of hearing has been filed by the respondent pursuant to the provisions of subrule 11.4(6).

11.6(4) *Release of investigative report.* If the board finds probable cause of a violation, the investigative report will be available to the respondent upon request. Information contained within the report is confidential and may be used only in connection with the disciplinary proceedings before the board.

282—11.7(17A,272) Notice of hearing.

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

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

11.7(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, date, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matter asserted;

e. Identification of all parties including the name, address and telephone numbers of counsel representing each of the parties where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

h. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11 and rule 282—11.8(17A,272), that the presiding officer be an administrative law judge.

282—11.8(17A,272) Presiding officer.

11.8(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the board.

11.8(2) The board may deny the request only upon a finding that one or more of the following apply:

a. Neither the board nor any officer of the board under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge with the qualifications identified in subrule 11.8(4) is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

11.8(3) The board shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 11.8(4), the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

11.8(4) An administrative law judge assigned to act as presiding officer in a contested case shall have the following technical expertness unless waived by the board:

a. A J.D. degree.

b. Additional criteria may be added by the board.

11.8(5) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the board. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

11.8(6) Unless otherwise provided by law, the board, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

282—11.9(17A,272) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the board in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

282—11.10(17A,272) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

282—11.11(17A,272) Disqualification.

11.11(1) A presiding officer or board member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

11.11(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does

not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 11.11(3) and 11.24(9).

11.11(3) In a situation where a presiding officer or board member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

11.11(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 11.11(1), the party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If the presiding officer determines that disqualification is appropriate, the presiding officer or board member shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 282—11.26(17A,272) and seek a stay under rule 282—11.30(17A,272).

282—11.12(17A,272) Consolidation—severance.

11.12(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

11.12(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

282—11.13(17A,272) Pleadings.

11.13(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

11.13(2) Answer. An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the notice of hearing not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

11.13(3) Amendment. Notices of hearing and answers may be amended with the consent of the parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

282—11.14(17A,272) Service and filing of pleadings and other papers.

11.14(1) *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing

as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

11.14(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

11.14(3) *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the Board of Educational Examiners, Grimes State Office Building, Des Moines, Iowa 50319-0147. All documents that are required to be served upon a party shall be filed simultaneously with the board.

11.14(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

11.14(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
>
> (Date) (Signature)

282—11.15(17A,272) Discovery.

11.15(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

11.15(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 11.15(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

11.15(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible under rule 282—11.22(17A,272). In discovery matters, the parties shall honor the rules of privilege imposed by law.

282—11.16(17A,272) Subpoenas.

11.16(1) *Subpoenas.* In connection with the investigation set forth in rule 282—11.5(272), the board is authorized by law to subpoena books, papers, records and any other evidence to help it determine whether it should institute a contested case proceeding (hearing). After service of the hearing notification contemplated by rule 282—11.7(17A,272), the following procedures are available to the parties in order to obtain relevant and material evidence:

a. Board subpoenas for books, papers, records, and other evidence will be issued to a party upon request. Such a request must be in writing. Application should be made to the board office specifying the evidence sought. Subpoenas for witnesses may also be obtained.

b. Evidence obtained by subpoena shall be admissible at the hearing if it is otherwise admissible under rule 282—11.22(17A,272). In subpoena matters the parties shall honor the rules of privilege imposed by law.

c. The evidence outlined in Iowa Code section 17A.13(2) where applicable and relevant shall be made available to a party upon request.

d. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

11.16(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

282—11.17(17A,272) Motions.

11.17(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

11.17(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer.

11.17(3) The presiding officer may schedule oral arguments on any motion.

11.17(4) Motions pertaining to the hearing, including motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

282—11.18(17A,272) Prehearing conference.

11.18(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be conducted not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

11.18(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

11.18(3) In addition to the requirements of subrule 11.18(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

11.18(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

282—11.19(17A,272) Continuances. A party has no automatic right to a continuance or delay of the board's hearing procedure or schedule. However, a party may request a continuance of the presiding officer no later than seven days prior to the date set for hearing. The presiding officer shall have the power to grant continuances. Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances. In these situations, the presiding officer shall grant continuances after consultation, if needed, with the chairperson of the board, the executive director, or the attorney representing the board. A board member shall not be contacted in person, by mail or telephone by a party seeking a continuance.

282—11.20(17A,272) Intervention.

11.20(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

11.20(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

11.20(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

11.20(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

282—11.21(17A,272) Hearing procedures.

11.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. If the presiding officer is the board or a panel thereof, an administrative law judge from the Iowa department of inspections and appeals may be designated to assist the board in conducting proceedings under this chapter. An administrative law judge so designated may rule upon motions and other procedural matters and assist the board in conducting the hearing.

11.21(2) All objections shall be timely made and stated on the record.

11.21(3) Legal representation.

a. The respondent has a right to participate in all hearings or prehearing conferences and may be represented by an attorney or another person authorized by law.

b. The office of the attorney general or an attorney designated by the executive director shall be responsible for prosecuting complaint allegations in all contested case proceedings before the board, except those cases in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations. The assistant attorney general or other designated attorney assigned to prosecute a contested case before the board shall not represent the board or the complainant in that case, but shall represent the public interest.

c. In a case in which the sole allegation involves the failure of a practitioner to fulfill contractual obligations, the person who files the complaint with the board, or the complainant's designee, shall represent the complainant during the contested case proceedings.

11.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

11.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

11.21(6) Witnesses may be sequestered during the hearing.

11.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

282—11.22(17A,272) Evidence.

11.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

11.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

11.22(3) Evidence in the proceeding shall be confined to the issues concerning allegations raised on the face of the complaint as to which the parties received notice prior to the hearing.

11.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

11.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

11.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

282—11.23(17A,272) Default.

11.23(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

11.23(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

11.23(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 282—11.28(17A,272). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

11.23(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

11.23(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to

the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

11.23(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

11.23(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 282—11.26(17A,272).

11.23(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

11.23(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

11.23(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 282—11.30(17A,272).

282—11.24(17A,272) Ex parte communication.

11.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the board or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 11.11(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

11.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

11.24(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

11.24(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 282—11.13(17A,272) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

11.24(5) Board members acting as presiding officers may communicate with each other without notice or opportunity for parties to participate.

11.24(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 11.24(1).

11.24(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 282—11.19(17A,272).

11.24(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the

communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

11.24(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

11.24(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

282—11.25(17A,272) Recording costs. Upon request, the board shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

282—11.26(17A,272) Interlocutory appeals. Upon written request of a party or on its own motion, the board may review an interlocutory order of the presiding officer. In determining whether to do so, the board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the board at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

282—11.27(17A,272) Final decision.

11.27(1) When the board presides over the reception of evidence at the hearing, its decision is a final decision.

11.27(2) When the board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the board without further proceedings unless there is an appeal to, or review on motion of, the board within the time provided in rule 282—11.28(17A,272).

282—11.28(17A,272) Appeals and review.

11.28(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the board within 30 days after issuance of the proposed decision.

11.28(2) *Review.* The board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

11.28(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

11.28(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

11.28(5) *Scheduling.* The board shall issue a schedule for consideration of the appeal.

11.28(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

282—11.29(17A,272) Applications for rehearing.

11.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

11.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the board decision on the existing record and whether, on the basis of the grounds enumerated in subrule 11.28(4), the applicant requests an opportunity to submit additional evidence.

11.29(3) *Time of filing.* The application shall be filed with the board within 20 days after issuance of the final decision.

11.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

11.29(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

282—11.30(17A,272) Stays of board actions.

11.30(1) *When available.*

a. Any party to a contested case proceeding may petition the board for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the board. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The executive director may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the board for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

11.30(2) *When granted.* In determining whether to grant a stay, the executive director or presiding officer shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

11.30(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the board or any other party.

282—11.31(17A,272) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

282—11.32(17A,272) Emergency adjudicative proceedings.

11.32(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the board may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the board by emergency adjudicative order. Before issuing an emergency adjudicative order the board shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the board is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the board is necessary to avoid the immediate danger.

11.32(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the board's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the board;

(3) Certified mail to the last address on file with the board;

(4) First-class mail to the last address on file with the board; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that board orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the board shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

11.32(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the board shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

11.32(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the board shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which board proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further board proceedings to a later date will be granted only in compelling circumstances upon application in writing.

282—11.33(272) Methods of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revoke a practitioner's license, certificate or authorization.
2. Suspend a practitioner's license, certificate or authorization until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, a practitioner from engaging in specified practices, methods, or acts.
4. Require additional education or training.
5. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
6. Issue a public letter of reprimand.
7. Order any other resolution appropriate to the circumstances of the case.

282—11.34(272) Reinstatement. Any person whose license, certificate or authorization to practice has been suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of the suspension.

11.34(1) All proceedings for reinstatement shall be initiated by the respondent, who shall file with the board an application for reinstatement. Such application shall be docketed in the original case in which the license, certificate or authorization was suspended. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the board.

11.34(2) An application for reinstatement shall allege facts which, if established, will be sufficient to enable the board to determine that the basis for the suspension of the respondent's license, certificate or authorization no longer exists and that it will be in the public interest for the license, certificate or authorization to be reinstated. The burden of proof to establish such facts shall be on the respondent.

11.34(3) An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law.

282—11.35(272) Application denial and appeal. The executive director is authorized by Iowa Code section 272.7 to grant or deny applications for licensure. If the executive director denies an application for an initial or exchange license, certificate, or authorization, the executive director shall send to the applicant by regular first-class mail written notice identifying the factual and legal basis for denying the application. If the executive director denies an application to renew an existing license, certificate, or authorization, the provisions of rule 282—11.36(272) shall apply.

11.35(1) *Mandatory grounds for license denial.* The executive director shall deny an application based on the grounds set forth in Iowa Code section 272.2(14), including:

a. The license application is fraudulent.

b. The applicant's license or certification from another state is suspended or revoked.

c. The applicant fails to meet board standards for application or for license renewal.

d. The applicant is less than 21 years of age, except that a coaching authorization or paraeducator certificate may be issued to an applicant who is 18 years of age or older, as provided in Iowa Code sections 272.12 and 272.31. A student enrolled in a practitioner preparation program who meets board requirements for a temporary, limited purpose license and who is seeking to teach as part of the practicum or internship may be less than 21 years of age.

e. The applicant has been convicted of one of the disqualifying criminal convictions set forth in paragraph 11.35(2)*"a."*

11.35(2) *Conviction of a crime and founded child abuse.*

a. *Disqualifying criminal convictions.* The board shall deny an application for licensure if the applicant or licensee has been convicted, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

(1) Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

(2) Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

1. First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
2. Lascivious acts with a child;
3. Detention in a brothel;
4. Assault with intent to commit sexual abuse;
5. Indecent contact with a child;
6. Sexual exploitation by a counselor; or
7. Lascivious conduct with a minor;

(3) Incest involving a child as prohibited by Iowa Code section 726.2;

(4) Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or

(5) Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

b. *Other criminal convictions and founded child abuse.* When determining whether a person should be denied licensure based on the conviction of any other crime, including a felony, or a founded report of child abuse, the executive director and the board shall consider the following:

(1) The nature and seriousness of the crime or founded abuse in relation to the position sought;

(2) The time elapsed since the crime or founded abuse was committed;

(3) The degree of rehabilitation which has taken place since the crime or founded abuse was committed;

(4) The likelihood that the person will commit the same crime or abuse again;

(5) The number of criminal convictions or founded abuses committed; and

(6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

11.35(3) *Fraudulent applications.* An application shall be considered fraudulent pursuant to Iowa Code section 272.6(4) if it contains any false representation of a material fact or any omission of a material fact which should have been disclosed at the time of application for licensure or is submitted with a false or forged diploma, certificate, affidavit, identification, or other document material to the applicant's qualification for licensure or material to any of the grounds for denial set forth in Iowa Code sections 272.2(14) and 272.6.

11.35(4) *Appeal procedure.*

a. An applicant who is aggrieved by the denial of an application for licensure and who desires to challenge the decision of the executive director must appeal the decision and request a hearing before the board within 30 calendar days of the date the notice of license denial is mailed. An appeal and request for hearing must be in writing and is deemed made on the date of the United States Postal Service nonmetered postmark or the date of personal service to the board office. The request for hearing shall specify the factual or legal errors the applicant contends were made by the executive director, must identify any factual disputes upon which the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure. If a request for hearing is timely made, the executive director shall promptly issue a notice of contested case hearing on the grounds asserted by the applicant.

b. The board, in its discretion, may act as presiding officer at the contested case hearing, may hold the hearing before a panel of three board members, or may request that an administrative law judge act as presiding officer. The applicant may request that an administrative law judge act as presiding officer and render a proposed decision pursuant to rule 282—11.8(17A,272). A proposed decision by a panel of board members or an administrative law judge is subject to appeal or review by the board pursuant to rule 282—11.28(17A,272).

c. Hearings concerning licensure denial shall be conducted according to the contested case procedural rules in this chapter. Evidence supporting the denial of the license may be presented by an assistant attorney general. 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.

d. On appeal, the board may grant or deny the application for licensure. If the application for licensure is denied, the board shall state the reason or reasons for the denial and may state conditions under which the application could be granted, if applicable.

11.35(5) *Judicial review.* Judicial review of a final order of the board denying licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 which are applicable to judicial review of an agency's final decision in a contested case. In order to exhaust administrative remedies, an applicant aggrieved by the executive director's denial of an application for licensure must timely appeal the adverse decision to the board.

282—11.36(272) Denial of renewal application. If the executive director denies an application to renew a license, certificate or authorization, a notice of hearing shall be issued to commence a contested case proceeding. The executive director may deny a renewal application on the same grounds as those that apply to an application for initial or exchange licensure described in subrules 11.35(1) to 11.35(3).

11.36(1) *Hearing procedure.* Hearings on denial of an application to renew a license shall be conducted according to the contested case procedural rules in this chapter. Evidence supporting the denial of the license may be presented by an assistant attorney general. The provisions of subrules 11.35(4) and 11.35(5) shall apply.

11.36(2) *Judicial review.* Judicial review of a final order of the board denying renewal of licensure may be sought in accordance with the provisions of Iowa Code section 17A.19 which are applicable to judicial review of an agency's final decision in a contested case.

11.36(3) *Impact of denial of renewal application.* Pursuant to Iowa Code section 17A.18(2), if the licensee has made timely and sufficient application for renewal, an existing license shall not expire until the last day for seeking judicial review of the board's final order denying the application or a later date fixed by order of the board or reviewing court.

11.36(4) *Timeliness of renewal application.* Within the meaning of Iowa Code section 17A.18(2), a timely and sufficient renewal application shall be:

a. Received by the board on or before the date the license is set to expire or lapse;

b. Signed by the licensee if submitted in paper form or certified as accurate if submitted electronically;

c. Fully completed; and

d. Accompanied by the proper fee. The fee shall be deemed improper if the amount is incorrect, the fee was not included with the application, or the licensee's check is unsigned or returned for insufficient funds.

282—11.37(272) Mandatory reporting of contract nonrenewal or termination or resignation based on allegations of misconduct. The board of directors of a school district or area education agency, the superintendent of a school district or the chief administrator of an area education agency, and the authorities in charge of a nonpublic school shall report to the board the nonrenewal or termination, for reasons of alleged or actual misconduct, of a person's contract executed under Iowa Code sections 279.12, 279.13, 279.15 through 279.21, 279.23, and 279.24, and the resignation of a person who holds a license, certificate, or authorization issued by the board as a result of or following an incident or allegation of misconduct that, if proven, would constitute a violation of 282—subparagraph 25.3(1)*"b"*(1), when the board or reporting official has a good-faith belief that the incident occurred or the allegation is true.

11.37(1) *Method of reporting.* The report required by this rule may be made by completion and filing of the complaint form described in subrule 11.4(2) or by the submission of a letter to the executive director of the board which includes: the full name, address, telephone number, title and signature of the reporter; the full name, address, and telephone number of the person who holds a license, certificate or authorization issued by the board; a concise statement of the circumstances under which the termination, nonrenewal, or resignation occurred; and any additional information or documentation which the reporter believes will be relevant to assessment of the report pursuant to subrule 11.37(4).

11.37(2) *Timely reporting required.* The report required by this rule shall be filed within 60 days of the date of local board action on the termination or resignation.

11.37(3) *Confidentiality of report.* Information reported to the board in accordance with this rule is privileged and confidential, and, except as provided in Iowa Code section 272.13, is not subject to discovery, subpoena, or other means of legal compulsion for its release to a person other than the respondent and the board and its employees and agents involved in licensee discipline, and is not admissible in evidence in a judicial or administrative proceeding other than the proceeding involving licensee discipline.

11.37(4) *Action upon receipt of report.*

a. Upon receipt of a report under this rule, the executive director of the board shall review the information reported to determine whether a complaint investigation should be initiated.

b. In making this determination, the executive director shall consider the nature and seriousness of the reported misconduct in relation to the position sought or held, the time elapsed since the misconduct, the degree of rehabilitation, the likelihood that the individual will commit the same misconduct again, and the number of reported incidents of misconduct.

c. If the executive director determines a complaint should not be initiated, no further formal action will be taken and the matter will be closed.

d. If the executive director determines a complaint investigation should be initiated, the executive director shall assign the matter for investigation pursuant to rule 282—11.5(272).

11.37(5) *Proceedings upon investigation.* From the time of initiation of an investigation, the matter will be processed in the same manner as a complaint filed under rule 282—11.4(17A,272).

282—11.38(256,272) Reporting by department of education employees.

11.38(1) *Method of reporting.* A report of misconduct made by the director, pursuant to Iowa Code Supplement section 256.9(56), or made by an employee of the department of education, pursuant to Iowa Code Supplement section 272.15(2), shall comply with the requirements of subrule 11.37(1).

11.38(2) *Confidentiality.* Information reported to the board in accordance with this rule is privileged and confidential, except as provided in Iowa Code section 272.13.

11.38(3) *Review and investigation of report.* The report shall be reviewed and investigated pursuant to subrules 11.37(4) and 11.37(5).

These rules are intended to implement Iowa Code chapters 17A and 272.

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ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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CHAPTER 1
IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

1.1(68A,68B) General agency description
1.2(68B) Requirements for requesting board advisory opinions
1.3(68B) Processing of advisory opinion requests; routine administrative advice
1.4(68B) Board code of ethics

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

2.1(22,68A,68B) Definitions
2.2(22,68A,68B) Statement of policy
2.3(22,68A,68B) Requests for access to records
2.4(22,68A,68B) Procedures for access to confidential records
2.5(22,68A,68B) Request for treatment of a record as a confidential record
2.6(22,68A,68B) Procedure by which a subject may have additions, dissents or objections entered into the record
2.7(22,68A,68B) Consent to disclosure by the subject of a confidential record
2.8(22,68A,68B) Notice to suppliers of information
2.9(22,68A,68B) Disclosure without the consent of the subject
2.10(22,68A,68B) Routine use
2.11(22,68A,68B) Consensual disclosure of confidential records
2.12(22,68A,68B) Release to subject
2.13(22,68A,68B) Availability of records
2.14(22,68A,68B) Personally identifiable information
2.15(22,68A,68B) Other groups of records
2.16(22,68A,68B) Data processing systems
2.17(22,68A,68B) Limitation of applicability
2.18(68B) Use of information prohibited

CHAPTER 3
IOWA ELECTION CAMPAIGN FUND

3.1(68A) Interpretation of checkoff markings
3.2(68A) Distribution of funds
3.3(68A) Director of revenue—monthly reports
3.4(68A) Funds—application and transfer
3.5(68A) Nonlegitimate Iowa election campaign fund expenses; documentation; return of funds
3.6(68A) Legitimate campaign expenses
3.7(68A) Loss of party status
3.8(68A) Filing of Iowa election campaign fund report

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

DIVISION I
ORGANIZATIONAL REQUIREMENTS

4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due
4.2(68A,68B) Information required: committee name
4.3(68A,68B) Information required: committee purpose; party affiliation
4.4(68A,68B) Information required: officers; committee information; signatures
4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer
4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity
4.8(68A,68B) Disclosure reporting required—where reports filed
4.9(68A) Campaign disclosure report due dates
4.10(68A) Time of filing
4.11(68A) Voluntary registration—Form DR-SFA
4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another
4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules
4.14(68A,68B) Schedule A - Monetary Receipts
4.15(68A,68B) Schedule B - Monetary Expenditures
4.16(68A,68B) Schedule D - Incurred Indebtedness
4.17(68A,68B) Schedule E - In-kind Contributions
4.18(68A,68B) Schedule F - Loans Received and Repaid
4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants
4.20(68A,68B) Schedule H - Campaign Property
4.21(68A) Reconciled bank statement required with January report and final report
4.22(68A,68B) Verification of reports; incomplete reports
4.23(68A,68B) Amendment—statements, disclosure reports and notices
4.24(68A) Reporting of state party building fund transactions
4.25(68A,68B) Legitimate expenditures of campaign funds
4.26(68A) Transfers between candidates
4.27(68A) Filing of independent expenditure statement
4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals
4.29(68A,68B) Contributions by minors
4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors
4.31(68A) Information required for a trust to avoid a contribution in the name of another person
4.32(68A) Contributions from political committees not organized in Iowa
4.33(68A) Reporting of earmarked contributions
4.34(68A) Copies of reports filed by 527 Committees
4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC
4.36(68A) Cash transactions
4.37(68A,68B) Record keeping

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

4.38(68A)	Political attribution statement—contents
4.39(68A)	Specific items exempted from or subject to attribution statement requirement; multiple pages
4.40(68A,68B)	Newspaper or magazine
4.41(68A,68B)	Apparent violations; remedial action
4.42 and 4.43	Reserved

DIVISION IV
CORPORATE POLITICAL ACTIVITY

4.44(68A,68B)	Prohibited corporate activity
4.45(68A,68B)	Corporate-sponsored political committee
4.46	Reserved
4.47(68A,68B)	Permitted activity—reimbursement required
4.48(68A)	Sham newspapers subject to campaign laws
4.49(68A,68B)	Individual property
4.50	Reserved
4.51(68A)	Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable
4.52(68A,68B)	Corporate involvement with political committee funds

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

4.53(68A,68B)	Express advocacy; in-kind contributions; independent expenditures— definitions

DIVISION VI
COMMITTEE DISSOLUTION

4.54(68A)	Committee dissolution; disposition of property; resolution of loans or debts
4.55(68A)	Statement of dissolution; final report; final bank statement
4.56 and 4.57	Reserved

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

4.58(68B)	Late-filed campaign disclosure reports
4.59(68B)	Routine civil penalty assessment for late-filed disclosure reports
4.60(68B)	Requests for waiver of penalties
4.61(68B)	Contested case challenge
4.62(68B)	Payment of penalty

CHAPTER 5
USE OF PUBLIC RESOURCES FOR A POLITICAL PURPOSE

5.1(68A)	Scope of chapter
5.2(68A)	Applicability
5.3(68A)	Definitions
5.4(68A)	Use of public resources for a political purpose prohibited
5.5(68A)	Exceptions from prohibition on use of public resources for a political purpose
5.6(68B)	Board advice
5.7(68B)	Complaints
5.8(68A)	Holders of certain government positions prohibited from engaging in political activities

CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

6.1(68B)	Scope of chapter
6.2(68B)	Definitions
6.3(68B)	Complaints or filing information alleging a violation
6.4(68B)	Board advice

DIVISION II
CONFLICT OF INTEREST AND MISUSE OF PROPERTY

6.5 to 6.7	Reserved
6.8(68B)	Misuse of public property
6.9(68B)	Use of confidential information

DIVISION III
SALES OR LEASES OF GOODS OR SERVICES

6.10(68B)	Prohibition on sales; when public bids required—disclosure of income
6.11(68B)	Sales or leases by regulatory agency officials or employees
6.12(68B)	Sales or leases by members of the office of the governor

DIVISION IV
EMPLOYMENT RESTRICTIONS

6.13	Reserved
6.14(68B)	Engaging in services against the interest of the state prohibited
6.15	Reserved

DIVISION V
GIFTS AND OFFERS

6.16 to 6.18	Reserved
6.19(68B)	Prohibition on receipt of an honorarium
6.20(68B)	Loans from executive branch lobbyists prohibited

CHAPTER 7
PERSONAL FINANCIAL DISCLOSURE

7.1(68B)	Filing requirements and procedures
7.2(68B)	Information disclosed on form
7.3(68B)	Procedure for determining persons required to file with the board—distribution of forms
7.4	Reserved
7.5(68B)	Penalties
7.6(68B)	Requests for waiver of penalties
7.7(68B)	Contested case challenge
7.8(68B)	Payment of penalty
7.9(68B)	Retention and availability of filed forms

CHAPTER 8
EXECUTIVE BRANCH LOBBYING

8.1(68B)	Executive branch lobbying defined
8.2(68B)	Executive branch lobbyist defined
8.3(68B)	Individuals not considered executive branch lobbyists
8.4(68B)	Executive branch lobbyist client defined
8.5(68B)	Lobbyist compensation defined; contingency fee lobbying prohibited
8.6	Reserved
8.7(68B)	Lobbyist registration required
8.8	Reserved

8.9(68B) Executive branch lobbyist client reporting
8.10(68B) Session function registrations and reports
8.11(68B) Penalties for delinquent reports
8.12(68B) Request for waiver of penalty
8.13(68B) Contested case proceeding
8.14(68B) Payment of penalty
8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited
8.16(68B) Lobbyists prohibited from making loans
8.17(68B) Ban on certain lobbying activities by government personnel
8.18(68B) False communications prohibited
8.19(68B) Advisory opinions
8.20(68) Retention and availability of filed forms

CHAPTER 9
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES
9.1(68B) Complaints
9.2(68B) Investigations—board action
9.3(68B) Grounds for disciplinary action
9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters
9.5(68B) Settlements
9.6(68B) Whistle-blower protection

CHAPTER 10
Reserved

CHAPTER 11
CONTESTED CASE PROCEDURES
11.1(17A,68B) Scope and applicability
11.2(17A,68B) Definitions
11.3(17A,68B) Time requirements
11.4(17A,68B) Requests for contested case proceeding
11.5(17A,68B) Notice of hearing
11.6(17A,68B) Waiver of procedures
11.7(17A,68B) Telephone proceedings
11.8(17A,68B) Disqualification; request for administrative law judge
11.9(17A,68B) Consolidation—severance
11.10(17A,68B) Pleadings
11.11(17A,68B) Service and filing of pleadings and other papers
11.12(17A,68B) Discovery
11.13(17A,68B) Subpoenas
11.14(17A,68B) Motions
11.15(17A,68B) Prehearing conference
11.16(17A,68B) Continuances
11.17(17A,68B) Withdrawals
11.18(17A,68B) Intervention
11.19(17A,68B) Hearing procedures
11.20(17A,68B) Evidence
11.21(17A,68B) Default
11.22(17A,68B) Ex parte communication
11.23(17A,68B) Recording costs
11.24(17A,68B) Interlocutory appeals
11.25(17A,68B) Final decision

11.26(17A,68B) Board review
11.27(17A,68B) Application for rehearing
11.28(17A,68B) Stay of agency actions
11.29(17A,68B) No factual dispute contested cases

CHAPTER 12
DECLARATORY ORDERS

12.1(17A,68B) Petition for declaratory order
12.2(17A,68B) Briefs
12.3(17A,68B) Notice of petition
12.4(17A,68B) Intervention
12.5(17A,68B) Inquiries
12.6(17A,68B) Board consideration
12.7(17A,68B) Action on petition
12.8(17A,68B) Refusal to issue order
12.9(17A,68B) Contents of declaratory order
12.10(17A,68B) Copies of orders
12.11(17A,68B) Effect of a declaratory order
12.12(17A,68B) Advisory opinion

CHAPTER 13
PETITIONS FOR RULE MAKING

13.1(68B) Petition for rule making
13.2(68B) Briefs
13.3(68B) Inquiries
13.4(68B) Board consideration

CHAPTER 14
BOARD PROCEDURE FOR RULE MAKING

14.1(17A) Applicability
14.2(17A) Advice on possible rules before notice of proposed rule adoption
14.3(17A) Public rule-making docket
14.4(17A) Notice of proposed rule making
14.5(17A) Public participation
14.6(17A) Regulatory analysis
14.7(17A,25B) Fiscal impact statement
14.8(17A) Time and manner of rule adoption
14.9(17A) Variance between adopted rule and published notice of proposed rule adoption
14.10(17A) Exemptions from public rule-making procedures
14.11(17A) Concise statement of reasons
14.12(17A) Contents, style, and form of rule
14.13(17A) Board rule-making record
14.14(17A) Filing of rules
14.15(17A) Effectiveness of rules prior to publication
14.16(17A) General statements of policy
14.17(17A) Review by board of rules

CHAPTER 15
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

15.1(17A) Definition
15.2(17A,68A,68B) Scope of chapter
15.3(17A,68A,68B) Applicability
15.4(17A) Criteria for waiver

15.5(17A,68A,68B) Filing of petition
15.6(17A) Content of petition
15.7(17A) Additional information
15.8(17A) Notice
15.9(17A) Hearing procedures
15.10(17A) Ruling
15.11(17A,22) Public availability
15.12(17A) Summary reports
15.13(17A) Cancellation of a waiver
15.14(17A,68A,68B) Violations
15.15(17A,68A,68B) Defense
15.16(17A) Appeals

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 4]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 4]

DIVISION I
ORGANIZATIONAL REQUIREMENTS

351—4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due.

4.1(1) *Persons subject to requirement.* Every committee shall file a statement of organization (Form DR-1) within ten days from the date of its organization. The forms shall be either typewritten or printed legibly in black ink.

a. "Committee" defined. "Committee" includes the following:

(1) A "candidate's committee" that is the committee, even if the committee consists only of the candidate, designated by a candidate for a state or local office to receive contributions, make expenditures, or incur debts in excess of $750.

(2) A "political committee" (PAC) that is a committee exceeding the $750 organizational threshold to expressly advocate the nomination, election, or defeat of candidates or to expressly advocate the passage or defeat of a ballot issue. The board shall automatically classify as a political committee any political organization that loses its status as a political party because it fails to meet the requirements of Iowa Code section 43.2. The board shall automatically classify as a political committee any county central committee that operated under the former political party.

(3) A "state statutory political committee" (state party), "county statutory political party" (county central committee), or "city statutory political committee" (city central committee).

(4) A person that wishes to register a committee for purposes of using the short form "paid for by" attribution statement shall file Form DR-SFA pursuant to rule 351—4.11(68A).

b. When organization occurs; financial thresholds. At the latest, organization is construed to have occurred as of the date that the committee first exceeded $750 of financial activity in a calendar year in any of the following categories: contributions received (aggregate of monetary and in-kind contributions); expenditures made; or indebtedness incurred.

c. Permanent organizations temporarily engaging in political activity. The requirement to file the statement of organization applies to an entity that comes under the definition of a "political committee" (PAC) in Iowa Code Supplement section 68A.102(18) by receiving contributions, making expenditures, or incurring debts in excess of $750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue. A permanent organization that makes a one-time contribution in excess of $750 may in lieu of filing a statement of organization follow the procedure in rule 351—4.35(68A). A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

d. Independent expenditure committee. A person that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3)*"a"* as amended by 2010 Iowa Acts, Senate File 2354, section 3, due to the filing of an independent expenditure statement (Form Ind-Exp-O) shall be referred to as an "independent expenditure committee." An independent expenditure committee, or a sole individual making an independent expenditure by filing Form Ind-Exp-I, is not required to file a statement of organization.

4.1(2) *Place of filing.* Statements of organization shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.1(3) *Time of filing.* A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed statements must be submitted on or before

11:59 p.m. of the tenth day after the organization of the committee is required. A committee that is mandated by statute to electronically file a statement of organization shall file the statement with the board on or before 4:30 p.m. on the due date. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.1(4) *Candidate defined.* For purposes of Iowa Code chapters 68A and 68B and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. For purposes of Iowa Code chapter 68A and any rules of the board on campaigning for public office, "candidate" includes any judge or judicial employee who is required by law to stand for retention. "Takes affirmative action" includes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

4.1(5) *Ballot issue defined.* "Ballot issue" means a question that has been approved by a political subdivision or the general assembly to be placed before the voters or is otherwise required by law to be placed before the voters. "Ballot issue" does not include the nomination, election, or defeat of a candidate.

4.1(6) *Electronic format or electronic filing defined.* "Electronic format" or "electronic filing" means the board's electronic filing system for submitting a statement of organization via the board's Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code section 68A.201 and section 68A.401 as amended by 2009 Iowa Acts, Senate File 51, section 1.

[**ARC 7995B**, IAB 7/29/09, effective 9/2/09; **ARC 8290B**, IAB 11/18/09, effective 12/23/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.2(68A,68B) Information required: committee name.

4.2(1) *Full name required.* The statement of organization shall include the full name of the committee. A committee using an abbreviation or acronym as part of the committee name shall provide with the statement of organization a written explanation of the full word or words that are abbreviated or that form the acronym.

4.2(2) *Duplication of name prohibited.* The committee name shall not duplicate the name of another committee organized under Iowa Code chapter 68A. The board shall determine whether two committee names are in duplication in violation of Iowa Code section 68A.201(2)*"a."* A committee duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate's committee unless the committee's name duplicates the name of another organized committee. A committee shall not duplicate the name of a dissolved committee for a period of ten years after the dissolved committee is certified as being dissolved except when the candidate for both committees is the same individual.

4.2(3) *Candidate's surname required in committee name.* A candidate filing a statement of organization on or after July 1, 1995, shall include the candidate's surname within the committee name. This requirement also applies to a new candidate's committee organized by a candidate who has a preexisting candidate's committee but who organizes a new candidate's committee or files an amended statement of organization.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 7646B**, IAB 3/25/09, effective 4/29/09]

351—4.3(68A,68B) Information required: committee purpose; party affiliation.

4.3(1) *Committee purpose.* An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate's committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate's committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level. This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 - A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 - A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a ballot issue committee. This type of committee also includes a political committee that expressly advocates for or against a statewide ballot issue (constitutional amendment) or a political committee that expressly advocates for or against ballot issue questions in multiple cities or counties.

4.3(2) *Party affiliation.* A candidate's committee is deemed to be established to expressly advocate the election of a candidate for public office. Each candidate's committee shall designate the political affiliation of the candidate. Any other committee shall designate that it is either established to expressly advocate the election or defeat of candidates or the passage or defeat of a ballot issue.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 8289B**, IAB 11/18/09, effective 12/23/09]

351—4.4(68A,68B) Information required: officers; committee information; signatures.

4.4(1) *Committee officers.* The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer whom the committee is required by statute to appoint. Each candidate's committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. The committee may appoint other officers not required by statute without restriction on residency or age, and the committee is not required to disclose these officers. Except for a candidate's committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee's funds in bank accounts in a financial institution in Iowa.

4.4(2) *Committee address and telephone number.* The address and telephone number of the candidate as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to the candidate's committee. The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to every other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.

4.4(3) *Signatures.* The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any

other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer.

4.5(1) *Segregation and deposit of funds.* All committee funds shall be maintained in a financial institution and shall be segregated from any other funds held by a candidate, officer, member, or associate of the committee. The committee treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee.

4.5(2) *Exception from segregation of committee funds.* A candidate's committee that receives contributions only from the candidate is not required to maintain a separate account. A permanent organization temporarily engaging in activity that qualifies it as a political committee that uses existing general operating funds and does not solicit or receive funds from other sources for campaign purposes is not required to maintain a separate account.

4.5(3) *Identification of financial institution and account.* The committee shall disclose on the committee's statement of organization the name and mailing address of all financial institutions in which committee funds are maintained. The committee shall also disclose the name and type of all accounts in which committee funds are maintained, and the name of any such account shall be the same as the committee name on the statement of organization.

4.5(4) *Notice to treasurer.* Any person who receives contributions for a committee shall render the contributions to the treasurer within 15 days of receipt and provide the committee treasurer with the reporting information required by Iowa Code Supplement section 68A.203(2).

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.203.

351—4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought.

4.6(1) *Amendment within 30 days.* If there is a change in any of the information disclosed on a statement of organization, the committee shall file with the board an amended statement within 30 days of the change. An amended statement shall be filed with the board in a format as required by 2009 Iowa Code Supplement section 68A.401 as amended by 2010 Iowa Acts, Senate File 2128, section 3, and board rule 351—4.1(68A,68B).

4.6(2) *New office sought.* A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. A candidate filing an amended statement of organization for a new office shall continue to file the required campaign reports regardless of whether the $750 financial filing threshold for the new office has been exceeded. A candidate who has filed a statement of organization for one office and who then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 8787B**, IAB 6/2/10, effective 7/7/10]

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

351—4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity.

4.7(1) *Disclosure reporting required.* Every committee that has filed a statement of organization under Iowa Code section 68A.201 and rule 351—4.1(68A,68B), has exceeded the financial activity threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions, or has made an independent expenditure shall file a campaign disclosure report pursuant

to Iowa Code section 68A.402. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

4.7(2) *Information on initial report.* The first disclosure report filed by a committee shall include the relevant financial information covering the period from the beginning of the committee's financial activity through the end of the current reporting period.

4.7(3) *Funds available from prior committee.* If funds are available to a candidate's committee from a prior candidacy of that candidate, or to a ballot issue committee from a prior effort on a ballot issue, and the prior candidacy or effort had not exceeded the financial reporting threshold, the carryover balance shall be disclosed by the new committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover, the date of the prior election, and the name and address of any source that made contributions to the candidacy or ballot effort that totaled more than $750 during the preceding three calendar years.

4.7(4) *Funds available from preballot issue activity.* Funds that are raised for an activity that is not included in the definition of a ballot issue in Iowa Code Supplement section 68A.102(1) and that are made available to a subsequent ballot issue committee shall be disclosed by the committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover balance, the date of the preballot issue activity, and the name and address of any source that made contributions to the activity that totaled more than $750 during the previous three calendar years.

4.7(5) *No financial activity during reporting period.* A committee that did not have any financial activity during the relevant reporting period for which a disclosure report is due shall be required to file only Form DR-2. However, if the committee had previously disclosed debts or loans, those obligations shall again be disclosed on either Schedule D - Incurred Indebtedness or Schedule F - Loans Received and Repaid, as appropriate, and the schedule or schedules shall be included with Form DR-2. A candidate's committee that has reportable campaign property under Iowa Code Supplement section 68A.304 shall disclose the property on Schedule H - Campaign Property and the schedule shall be included with Form DR-2.

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.8(68A,68B) Disclosure reporting required—where reports filed.

4.8(1) *Place of filing.* Disclosure reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-4073, as an E-mail attachment, or electronically through the board's Web site at www.iowa.gov/ethics.

4.8(2) *Reports made available.* The board shall post on its Web site at www.iowa.gov/ethics all statements and reports filed under Iowa Code chapter 68A.

4.8(3) *Records retention.* The board shall maintain and retain all statements and reports filed under Iowa Code chapter 68A under the applicable provisions of Iowa Code chapter 305.

4.8(4) *Electronic format or electronic filing defined.* "Electronic format" or "electronic filing" means the board's electronic filing system for submitting campaign disclosure reports via the board's Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code section 68A.401 as amended by 2009 Iowa Acts, Senate File 51, section 1, and section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4.

[**ARC 7995B**, IAB 7/29/09, effective 9/2/09]

351—4.9(68A) Campaign disclosure report due dates.

4.9(1) *Statewide office, general assembly, judge standing for retention.* A candidate's committee of a candidate for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. *Election year.*

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election* through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election* through December 31 of election year

b. Supplementary report.

Report due	Covering period
Friday preceding primary election*	May 15 through Tuesday preceding primary election*
Friday preceding general election*	October 15 through Tuesday preceding general election*

*If supplementary report required. See subrule 4.9(2).

c. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

d. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(1)"a."*

4.9(2) *Statewide office or general assembly—supplementary reports.* In addition to reports required under subrule 4.9(1), a supplementary report is required if contributions received during the period beginning on the date of initial financial activity, or the day after the period covered by the last report, as applicable, through the Tuesday preceding the primary or general election equal or exceed the following thresholds:

Office sought	Contribution threshold
Governor	$10,000 or more
Other statewide office	$5,000 or more
General assembly	$1,000 or more

4.9(3) *County candidate.* A candidate's committee of a candidate for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(3)"a."*

4.9(4) *City candidate.* A candidate's committee of a candidate for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(4)"a."*

4.9(5) *School board or other political subdivision.* A candidate's committee of a candidate for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(5)"a."*

4.9(6) *State statutory political committee (state political party).* A committee defined in Iowa Code Supplement section 68A.102(22)as a state statutory political committee shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(7) *County statutory political committee (county central committee).* A committee defined as a county statutory political committee in Iowa Code Supplement section 68A.102(12) shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(8) *State political committee (state PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
July 19	January 1 through June 30
January 19 (next calendar year)	July 1 through December 31

4.9(9) *County political committee (county PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(10) *City political committee (city PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(11) *School board or other political subdivision political committee (school board or other local PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(12) *Statewide or local ballot issue committee (ballot issue PAC).* A committee expressly advocating the passage or defeat of a statewide or local ballot issue shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity or previous report through ten days before election
May 19	Date of initial activity or previous report through May 14
July 19	Date of initial activity or previous report through July 14
October 19	Date of initial activity or previous report through October 14
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(13) *Permanent organizations.* A permanent organization temporarily engaging in political activity as described in Iowa Code Supplement section 68A.102(18) shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The committee shall file reports on the applicable due dates as required by this rule. The reports shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. "Permanent organization" means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

4.9(14) *Election year defined.* "Election year" means a year in which the name of the candidate or ballot issue appears on a ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, "election year" means a year in which primary and general elections are held.

4.9(15) *Independent expenditure reporting.* An independent expenditure committee that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) as amended by 2010 Iowa Acts, Senate File 2354, section 3, shall file an initial report at the same time as the committee files its original independent expenditure statement. The committee shall then continue to file reports according to the same schedule as the office or election to which the independent expenditure was directed until the committee files a notice of dissolution pursuant to Iowa Code section 68A.402B(3) as amended by 2010 Iowa Acts, Senate File 2354, section 2. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

This rule is intended to implement Iowa Code section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.10(68A) Time of filing. A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed, E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. A report that is mandated by statute to be electronically filed shall be filed with the board on or before 4:30 p.m. on the due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code section 68A.401(1) as amended by 2009 Iowa Acts, Senate File 51, and section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4.

[**ARC 8290B**, IAB 11/18/09, effective 12/23/09]

351—4.11(68A) Voluntary registration—Form DR-SFA.

4.11(1) *Persons voluntarily registering a committee.* A person that has not exceeded the $750 financial filing threshold may file Form DR-SFA for purposes of using the short form "paid for by"

attribution statement under Iowa Code section 68A.405 and rule 351—4.38(68A). A person using the short form "paid for by" attribution statement shall file Form DR-SFA with the board prior to distributing the political material containing the short form "paid for by" attribution statement.

4.11(2) *$750 threshold later exceeded.* A person filing Form DR-SFA shall not be required to file a statement of organization or be required to file disclosure reports unless the $750 threshold is later exceeded. A person that later exceeds the $750 threshold and that fails to timely file a statement of organization or to timely file disclosure reports may be subject to the appropriate board sanctions as set out by statute and board rule.

4.11(3) *Subsequent elections.* A person that filed Form DR-SFA for one election and then becomes involved in a subsequent election and wants to voluntarily register a committee shall file either a new Form DR-SFA or file an amended Form DR-SFA, which provides information concerning the new election.

This rule is intended to implement Iowa Code sections 68A.201 and 68A.405.

[**ARC 7994B**, IAB 7/29/09, effective 9/2/09]

351—4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another. When two disclosure reports are due from the same committee within five days of each other, the activity may be combined into one report. A committee choosing this option shall file a report on or before the second due date that covers the extended reporting period.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules. The board may require committees to submit relevant information not specifically delineated in Iowa Code Supplement chapter 68A on their disclosure report where the report form asks for and leaves space for information. All information shall be pertinent to the duties of the board.

4.13(1) *Official reporting forms.* The disclosure reporting forms provided by the board shall be the official forms on which the disclosure reports shall be submitted. Machine copies of original report forms are acceptable. The standard forms for campaign disclosure reports are:

DR-2 — Disclosure Summary Page
Schedule A — Monetary Receipts
Schedule B — Monetary Expenditures
Schedule C — (Reserved)
Schedule D — Incurred Indebtedness
Schedule E — In-kind Contributions
Schedule F — Loans Received and Repaid
Schedule G — Consultant Activity
Schedule H — Campaign Property

4.13(2) *Computer-generated reports.* Committees may generate a disclosure report in lieu of using a board-approved paper report or the board's electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(3) *Typewritten or legible ink reports required.* Information which is provided on all forms shall be either typewritten or printed legibly in black ink. Approved computer-generated reports satisfy this requirement.

4.13(4) *Special information required for city, school, or local ballot issue elections.* Committees expressly advocating the election or defeat of a candidate for city or school public office, or expressly advocating the passage or defeat of a local ballot issue, shall indicate in the designated spaces on the report summary page the date that the election is to be held, the period covered by the disclosure report, and the control county responsible for conducting the election.

4.13(5) *Signature on DR-2 Report Summary Page.* A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board's Web site is deemed signed when filed.

4.13(6) *Independent expenditure disclosures.* An independent expenditure committee that is required to file campaign reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) as amended by 2010 Iowa Acts, Senate File 2354, section 3, shall disclose campaign transaction information as required by Iowa Code section 68A.402A. However, the committee is required to disclose only those monetary receipts as provided in 2009 Iowa Code Supplement section 68A.404(3)*"a"*(2) as amended by 2010 Iowa Acts, Senate File 2354, section 3. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.403.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.14(68A,68B) Schedule A - Monetary Receipts.

4.14(1) *Reporting of all monetary receipts; chronological listing.* The committee shall report the amounts of all monetary receipts which are accepted by the committee during the reporting period. If a contribution is returned to a contributor prior to the end of the reporting period and is not deposited into the committee's bank account, the contribution is deemed to have been rejected and shall not be reported. A contribution which is physically received and either deposited into the committee's account or not returned by the end of the reporting period is deemed to have been accepted. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.14(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) that the contribution was physically received by a person on behalf of the committee. If the contribution is by check, the date of the contribution to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check. For contributions received by mail, the date of the contribution to be reported shall be the date that the recipient physically opens the envelope.

4.14(3) *Name and address of contributor; joint accounts.* The schedule shall include the name and address of each person who has made one or more contributions of money to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee. In the case of a contribution by check, the contributor name on the disclosure report shall be the name shown as the account name on the account, except that if the check is on a joint account, the contribution shall be presumed to be from the person who signs the check. If the committee chooses to itemize contributions that are less than the required itemization threshold, it may do so, but shall either do so for all contributions or none of the contributions under the threshold.

4.14(4) *Unitemized contributions and freewill donations.* If the committee does not choose to itemize all contributions under the itemization threshold ($25 for most committees, see Iowa Code Supplement section 68A.402(3)*"b"*), it shall aggregate these contributions and report the aggregate amount as "unitemized contributions." No date received is required to be provided for miscellaneous unitemized contributions. Unitemized contributions may be solicited and received through a freewill donation such as a "fish bowl" or "pass the hat" collection if the collection is in compliance with rule 351—4.30(68A,68B). Unitemized contributions collected through freewill donations (the net amount of the collection after the itemization of those persons whose contributions of more than $10 in the freewill collection resulted in exceeding the annual itemization threshold) shall be reported by showing the net amount as "unitemized contributions—pass the hat (or can collection or fish bowl, for example) collection." The "date received" to be reported for a freewill donation is the date a representative of the committee takes possession of the proceeds of the collection.

4.14(5) *Relationship to candidate.* In the case of contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity. "Consanguinity" means a relative through descent from common ancestors (by blood). "Affinity" means a relative through a current marriage. A husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice

versa. "Degree of kinship" is determined by counting upward from one of the persons in question to the nearest common ancestor, and then down to the other person, calling it one degree for each generation in the ascending as well as the descending line. Under this rule, a woman's sister is related to her by consanguinity in the second degree. The sister is thus related to the woman's husband by affinity in the second degree. Other examples of relationships within the third degree between a contributor and a candidate would be the following: children and stepchildren (first degree); siblings and half-siblings (second degree); grandparents (second degree); grandchildren (second degree); aunts and uncles (third degree); nieces and nephews (third degree); great-grandparents (third degree) and great-grandchildren (third degree), all irrespective of whether the blood relationship is to the candidate or to the candidate's spouse.

4.14(6) *ID number and check number.* If a contribution to a statewide or general assembly candidate or a judge standing for retention is from a statewide political committee (PAC) or a state party committee, the candidate receiving the contribution shall include on the candidate's disclosure report the board-assigned identification number of the contributing committee and the check number by which the contribution was made. A list of ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.14(7) *Fund-raiser income.* Contributions arising from the sale of goods or services at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.14(8) *Interest and other monetary receipts other than contributions.* If the monetary receipt is not a "contribution," the name and address of the source of the funds shall be identified in the space provided for the name and address of "contributor," with a notation as to the purpose of the payment, such as "bank interest."

4.14(9) *Reverse entries—refunds.* If a committee determines to decline or otherwise return a contribution after it has been received, accepted, and deposited, the committee may issue a refund to the contributor, which shall be reported on Schedule A as a reverse entry, reducing the monetary receipts.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.15(68A,68B) Schedule B - Monetary Expenditures.

4.15(1) *Date expended.* The committee shall report the amounts of all itemized expenditures (expenditures of $5 or more) made by the committee for the reporting period chronologically by the date expended. The date of the expenditure is the date the check is issued. The complete date (month/day/year) shall be provided.

4.15(2) *Name and address of recipient.* The schedule shall include the name and address of each person to whom disbursements, other than loan repayments, were made during the reporting period. (Loan repayments shall be reported on Schedule F.)

4.15(3) *Purpose of expenditure.* The schedule shall include a description of the purpose of each disbursement. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "reimbursement for candidate lodging to attend campaign event," or "mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

4.15(4) *Miscellaneous (unitemized) expenses.* Notwithstanding the other provisions of this rule, disbursements of less than $5 may be shown as miscellaneous disbursements or expenses for the period so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed $100.

4.15(5) *Candidate ID number and committee check number.* If a contribution is made by a statewide political committee (PAC) or a state party committee to a statewide or general assembly candidate or a judge standing for retention, the committee making the contribution shall include on the committee's

disclosure report the board-assigned identification number of the recipient candidate's committee and the check number by which the contribution was made. A list of candidate ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.15(6) *Check transactions required.* All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check. Cash withdrawals and "petty cash" accounts are not permitted. Committees' activities which necessitate cash drawers or other cash transactions shall be conducted and reported as provided by rule 351—4.36(68A,68B).

4.15(7) *Reverse entries—refunds.* If a committee receives a refund of all or part of a disbursement previously made, the committee shall report the refund on Schedule B as a reverse entry, reducing the monetary expenditures. The purpose should include an explanation as to why the refund was made.

4.15(8) *Interest paid; bank charges.* Although repayments of loan principal are reported on Schedule F (see rule 351—4.18(68A,68B)), interest payments on loans shall be reported on Schedule B. Bank service charges and fees (e.g., monthly service fees, costs for check printing, returned check charges) shall also be reported and identified on Schedule B.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.16(68A,68B) Schedule D - Incurred Indebtedness.

4.16(1) *Reporting of debts and obligations other than monetary loans.* The committee shall report all debts and obligations owed by the committee which are in excess of the thresholds in subrule 4.14(3). This applies to any unpaid debt or obligations incurred by the committee for the purchase of a good or service, either as a debt or obligation owed to the immediate provider of the good or service, or as a debt or obligation owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee. However, monetary loans to the committee (which are deposited directly into the committee's account) shall be reported on Schedule F, not on Schedule D.

4.16(2) *Date incurred; balance owed.* The committee shall report the amounts of all indebtedness owed by the committee at the end of the reporting period, reported chronologically by the date incurred. The date the debt or obligation is incurred is the date on which the committee committed to obtaining the good or service underlying the obligation. This date may be earlier than the date the provider of the good or service issues a bill to the committee. For example, if the committee places a printing order, but the printer does not issue a bill until some time after the order is placed, the date which shall be reported as the date the debt was incurred is the date the order is placed, not the date the bill was issued. If the precise amount of the final bill is not known by the time the report is due, the committee shall provide its best estimate as to what the obligation will be, with an indication "(e)" that the amount reported is an estimate. The complete date (month/day/year) shall be provided. Debts and obligations incurred and reported in a prior reporting period but which remain unpaid as of the end of the current reporting period shall be included, showing the remaining balance on the obligation, as well as any new obligations incurred in the current reporting period. Payments of all or part of a previously reported obligation shall be reported as expenditures on Schedule B.

4.16(3) *Name and address of person to whom the debt or obligation is owed.* The schedule shall contain the name and address of each person to whom an obligation is owed, including both those obligations which were incurred during the reporting period and those outstanding obligations which are being carried forward from prior reports. If the obligation is owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee, the original nature of the obligation shall be provided; the name and address of the original provider of the good or service shall also be provided, unless the nature of the obligation indicates that the obligation is for the anticipated reimbursement for mileage or postage stamps.

4.16(4) *Nature of obligation.* The schedule shall include a description of the nature of each obligation. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and

"miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "anticipated reimbursement for candidate lodging to attend campaign event," or "anticipated mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.17(68A,68B) Schedule E - In-kind Contributions.

4.17(1) *Reporting of all in-kind contributions; chronological listing.* The committee shall report the amounts of all in-kind contributions which are accepted by the committee during the reporting period. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.17(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) on which the in-kind contribution was provided to the committee. The actual or fair market value of the in-kind contribution shall be reported regardless of whether or not the person providing the in-kind contribution has been billed for the costs.

4.17(3) *Name and address of contributor.* The schedule shall include the name and address of each person who has made one or more in-kind contributions to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee.

4.17(4) *Relationship to candidate.* In the case of in-kind contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

4.17(5) *Description of in-kind contribution; loaned equipment as in-kind contribution.*

a. The schedule shall include a description of the good or service contributed to the committee in kind. The description shall be a clear and concise statement that specifically describes the transaction which has occurred.

b. A committee's use of equipment owned by another organization, committee, or individual is reportable as an in-kind contribution. Equipment includes, but is not limited to, typewriters, calculators, copy machines, office furniture, computers and printers.

4.17(6) *Fair market value.* The committee shall provide either the actual (if known) or estimated fair market value of the good or service received.

4.17(7) *Fund-raiser item.* Goods or services contributed in kind for sale at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.17(8) *Unitemized contributions.* Notwithstanding the other provisions of this rule, in-kind contributions with a fair market value less than the itemization threshold noted in subrule 4.17(3) may be reported as "unitemized in-kind contributions."

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.18(68A,68B) Schedule F - Loans Received and Repaid.

4.18(1) *Reporting of monetary loans (not debts and obligations for goods and services).* The committee shall report all loan activity made to or repaid by the committee during the reporting period. This applies to any loan of money which is deposited into the committee's accounts. However, other debts and obligations owed for the provision of goods or services to the committee (which are not monetary advances deposited into the committee's account) shall be reported on Schedule D, not on Schedule F.

4.18(2) *Report of lump sum of unpaid loans carried over from last report.* The schedule shall contain a beginning entry of the total unpaid loans as of the last report. Loans received and itemized on prior reports should not be re-itemized on the current report, except as necessary to indicate repayment activity.

4.18(3) *Date received.* The schedule shall include the complete date (month/day/year) the loan was physically received by a person on behalf of the committee. If the loan was by check, the date of the loan to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check.

4.18(4) *Date paid.* The schedule shall include the complete date (month/day/year) a full or partial loan repayment is made by the committee. The date of the repayment is the date the check is issued. Full or partial loan repayments shall be shown on this schedule and should not be reported on Schedule B. However, loan interest payments shall be reported on Schedule B (see rule 351—4.15(68A,68B)) and not on Schedule F. Loans which may be and are forgiven in full or in part are considered in-kind contributions and shall be itemized on Schedule E, with a cross-reference entry in the space provided on Schedule F.

4.18(5) *Name and address of lender.* The schedule shall include the name and address of each person who has made one or more loans of money to the committee during the reporting period, or to whom the committee makes a full or partial loan repayment during the reporting period. If the person who made the loan to the committee is not the original source of the money, when the original source of the money is a third party (such as a bank which loans money to an individual who loans it to the committee) or if a third party has personally paid and assumed a loan from the original lender (such as an individual who pays off the loan to the bank with the expectation of receiving the loan repayment from the committee), the report shall also identify the name and address of the third party.

4.18(6) *Relationship to candidate.* In the case of monetary loans to candidates' committees, the schedule shall include information indicating whether the lender is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants. A committee that enters into a contract with a consultant for future or continuing performance shall be required to report expenditures made to the consultant and the nature of the performance of the consultant that is expected to be received by the committee. A committee is required to report in Part 1 of Schedule G any contracts with consultants that it has negotiated, the complete name and address of the consultant, the period of time during which the contract is in effect, and estimates of performance to be derived from the contract. Expenditures made to the consultant during a reporting period shall be reported with all other expenditures on Schedule B, and debts incurred with the consultant during the reporting period shall be reported with all other debts on Schedule D. Additionally, a detailed breakdown of the expenditures made by the consultant shall be reported by the committee in Part 2 of Schedule G and shall include the date of the expenditure, the purpose of the expenditure and the amount of the expenditure. The description of the purpose of the expenditure shall be consistent with the provisions of subrule 4.15(3).

For purposes of this rule, "contract" means an oral or written agreement between two parties for the supply or delivery of specific services in the course of the campaign. "Performance" means the execution or fulfillment of the contractual agreement. "Nature of performance" means a clear description of the specific services received or benefit derived as the result of a contract with a consultant. "Estimate of performance" means a clear description of the services the committee reasonably expects to receive or the benefit the committee reasonably expects to derive during the period of the contract.

This rule is intended to implement Iowa Code sections 68A.102(9) as amended by 2005 Iowa Acts, House File 312, section 3, and 68A.402A.

351—4.20(68A,68B) Schedule H - Campaign Property.

4.20(1) *Ongoing inventory.* Equipment, supplies, or other materials purchased with campaign funds or received in kind are campaign property. Campaign property, other than consumable campaign property, with a value of $500 or more when acquired by the committee shall be listed on the inventory section of the schedule. The property shall be listed on each report until it is disposed of by the committee or its residual value falls below $100 and the property is listed once as having a residual value of less than $100. "Consumable campaign property" means stationery, yard signs, and other

campaign materials that have been permanently imprinted to be specific to a candidate or election. For property purchased by the committee, the date purchased shall be the earlier of the date the committee attained physical possession of the property or the date the committee issued payment for the property. For in-kind contributions, the date received shall be the date on which the committee attained physical possession of the property. The committee shall provide the complete date (month/day/year). The schedules shall include the purchase price of property purchased by the committee and the actual or estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.

4.20(2) *Sales or transfers of campaign property.* The schedule shall include information regarding the sale or transfer of campaign property, other than consumable campaign property, which occurred during the current reporting period. The information shall include the complete date of the transaction (month/day/year), the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sales price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.

This rule is intended to implement Iowa Code Supplement sections 68A.304 and 68A.402.

351—4.21(68A) Reconciled bank statement required with January report and final report.

4.21(1) A committee that participates in an election at the state level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year shall attach to or submit with that disclosure report a copy of the committee's bank statement that includes activity through December 31 of the year reported.

4.21(2) A committee that participates in an election at the county, city, school, or other political subdivision level, or an independent expenditure committee, is not required to attach or submit a copy of the committee's bank statement unless requested to do so by the board. If a committee is requested to file the bank statement, the committee shall provide the board with a copy of the bank statement within ten days of the request. A sole individual making an independent expenditure and filing Form Ind-Exp-I is not required to submit a bank statement under rule 351—4.21(68A) unless requested to do so by the board.

4.21(3) If the bank statement cycle is such that the committee has not received the statement including activity through December 31 by the date for filing the January report, the committee shall separately file or submit the bank statement within ten days after receipt of the statement by the committee.

4.21(4) The committee shall include a reconciliation to justify outstanding checks and other discrepancies between the ending balance on the bank statement and the ending balance on the disclosure report.

4.21(5) A committee that files a final disclosure report shall comply with the requirements of subrule 4.55(5) concerning the filing of a final bank statement.

4.21(6) A committee seeking a waiver from the requirements of this rule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.22(68A,68B) Verification of reports; incomplete reports.

4.22(1) The board staff will review and desk audit each disclosure report. The board may contact other parties to verify the accuracy and completeness of the reports. The board may contact a representative of the committee and may contact other parties to determine the authenticity of information provided about filed reports.

4.22(2) If, upon review, board staff determine that a committee's report is incomplete because required information has been omitted or has been incorrectly reported, the staff shall communicate the deficiencies to the committee. A failure to satisfactorily respond to or to remedy the error or omission

may be grounds for a violation of Iowa Code Supplement section 68A.402 as a failure to file a report which conforms to the requirements of that provision.

This rule is intended to implement Iowa Code Supplement section 68A.402 and Iowa Code section 68B.32A.

351—4.23(68A,68B) Amendment—statements, disclosure reports and notices. A committee may amend a previously filed statement of organization, disclosure report or notice of dissolution. To amend a previously filed statement, report or notice, the committee shall file an amended document on the approved form and shall designate on the form in the space provided, if applicable, that the document being filed is an amendment to a previously filed statement, report or notice. The term "amended document" as used in this rule shall mean a document on forms issued by the board which includes only the information which is being added, deleted or changed from a previously filed statement of organization or notice of dissolution.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.24(68A) Reporting of state party building fund transactions. Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.

A state party committee filing a state party building fund report under this rule shall use either the report form prescribed by the board or a computer-generated report so long as the report includes the information required under subrule 4.24(2).

4.24(1) *Period covered.* A state party building fund report shall cover the time period from January 1 through December 31 of the previous year.

4.24(2) *Information to be disclosed.* The following information shall be disclosed on a state party building fund report:

a. The name and address of the state party committee.

b. The name and address of each person who makes a contribution in excess of $200, or contributions in the aggregate that exceed $200 during the period covered, to the state party building fund. If no contributions were received for the fund, the report shall disclose $0.00 as contributions received.

c. The date and the amount of the contribution. If aggregate contributions from one person are received that exceed $200, the amount to be disclosed shall be the total amount received from that person for the period covered and the date to be disclosed shall be the date of the last contribution.

d. The total amount of all contributions of $200 or less received during the period covered. This total amount shall be disclosed as being received from "unitemized" with the date of the contribution being the last day of the reporting period.

e. The name and mailing address of each person to whom an expenditure that exceeds $200 is made, or expenditures in the aggregate that exceed $200 during the period covered, from the state party building fund. If no expenditures were made from the fund, the report shall disclose $0.00 as expenditures made.

f. The date and the amount of the expenditure. If aggregate expenditures that exceed $200 are made to one person, the amount to be disclosed shall be the total amount made to that person for the period covered and the date to be disclosed shall be the date of the last expenditure.

g. The total amount of all expenditures of $200 or less made during the period covered. This total amount shall be disclosed as being expended to "unitemized" with the date of the expenditure being the last day of the reporting period.

h. The signature and date of the individual filing the state party building fund report.

4.24(3) *Place of filing.* A state party building fund report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.24(4) *Time of filing.* A state party building fund report shall be filed on or before January 31 of each year. If mailed, the report must bear a United States Postal Service postmark dated on or before the due date. A faxed report must be submitted on or before 11:59 p.m. on the due date. If January 31 falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date shall be extended to the next working day when the board office is open.

4.24(5) *Failure to file.* If the board determines that a state party committee has failed to timely file a state party building fund report, the state party committee is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code sections 68A.402A(1)*"k"* and 68A.503.

351—4.25(68A,68B) Legitimate expenditures of campaign funds.

4.25(1) Expenses which may be paid from campaign funds for campaign purposes include, but are not limited to, the following items so long as the items promote or enhance the candidacy of the candidate:

a. Electronic media advertising, such as radio, cable television and commercial television.

b. Published advertising, such as newspaper, magazine, newsletter and shopper advertising.

c. Printed promotional materials, such as brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards and "cowboy" political cards.

d. Political signs, such as yard signs, car signs, portable outdoor advertising, stationary outdoor advertising and billboards.

e. Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, and articles of clothing that are political advertising.

f. Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses for a candidate to attend a national political party convention are also permitted.

g. Contributions to political party committees.

h. The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candidate and guest is for the sole purpose of enhancing the candidacy of any person.

i. General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.

j. Purchase or lease of campaign equipment, such as copy machines, telephones, facsimile machines, computer hardware, software and printers.

k. Purchase or lease of campaign office space, parking lots or storage space and the payment for campaign office utilities and maintenance.

l. Payment of salaries, fringe benefits, bonuses, and payroll taxes of paid campaign staff. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, family members who perform actual work or services for a campaign and are not the candidate, candidate's spouse, or candidate's dependent children may be compensated for such work or services.

m. Payment for check printing and financial institution banking service charges.

n. Lease or rental of a campaign vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that noncampaign miles are reimbursed to the committee at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, the purchase of a campaign vehicle is prohibited.

o. Reimbursement to candidates and campaign workers for mileage driven for campaign purposes in a personal vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of

reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code.

p. Payment for food expenses and supplies for campaign-related activities, such as the purchase of food, beverages and table service for fund-raising events or campaign volunteers. However, except as provided in paragraph *"h,"* the purchase of tickets for meals or fund-raising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate's family is also prohibited. Payment for meals for the candidate (other than those involving tickets for fund-raiser events as addressed in paragraph *"h"*) is permitted as an allowable expenditure for campaign purposes if the meal was associated with campaign-related activities.

q. Payment of civil penalties and hearing costs assessed by the board.

r. Payment for the services of attorneys, accountants, consultants or other professional persons when those services relate to campaign activities.

s. Subscriptions to newspapers and periodicals that circulate within the area represented by the office that a candidate is seeking or holds, that contain information of a general nature about the state of Iowa, or that contain information useful to all candidates such as The Wall Street Journal and Roll Call. Candidates who are unsure whether a subscription is permissible shall seek guidance from the board prior to paying for the subscription with campaign funds.

t. Membership in service organizations including a local chamber of commerce that the candidate joins solely for the purpose of enhancing the candidate's candidacy.

u. Repayment of campaign loans made to the committee. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, candidates who make loans to their own committees shall not charge interest on the loans.

v. Purchase of reports of other candidates and political committees so long as the reports' contents are not used for solicitation or commercial purposes.

w. Donations to charitable organizations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.

x. Contributions to federal, state, county and city political party committees.

y. Refunds to contributors when a contribution has been accepted in error, or when a committee chooses to dispose of leftover funds by refunding them in prorated shares to the original contributors.

z. Payment for items with a purchase price not to exceed $250 per person that are presented to committee workers in recognition of services to the committee.

aa. Expenses incurred with respect to an election recount as provided in Iowa Code section 50.48.

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

4.25(2) Expenses which may be paid from campaign funds for educational and other expenses associated with the duties of office include, but are not limited to, the following items:

a. Purchase or lease of office supplies and equipment, such as paper, copy machines, telephones, facsimile machines, computer hardware, software and printers.

b. Travel, lodging and registration expenses associated with attendance at an educational conference of a state, national, or regional organization whose memberships and officers are primarily composed of state or local government officials or employees. However, meal expenses are not allowable as expenses associated with the duties of office under any circumstances.

c. Meals and other expenses incurred in connection with attending a local meeting to which the officeholder is invited and attends due to the officeholder's official position as an elected official.

d. Purchases of small, incidental items such as pencils, pens, rulers and bookmarks provided to members of the public touring the offices of the state or a political subdivision. However, such items distributed on public property shall not expressly advocate the election or defeat of a candidate or the adoption or defeat of a ballot issue as prohibited in Iowa Code Supplement section 68A.505. For example, a bookmark bearing the state seal could be distributed on public property, while a bookmark that identified the donor as a candidate for office could not be distributed on public property.

e. Gifts purchased for foreign dignitaries when the officeholder is part of an official trip out of the country such as a trade mission or exchange program.

f. Printing of additional stationery and supplies above the standard allotment of the state or political subdivision.

4.25(3) Expenses which may be paid from campaign funds for constituency services include, but are not limited to, the following items:

a. Mailings and newsletters sent to constituents.

b. Polls and surveys conducted to determine constituent opinions.

c. Travel expenses incurred in communicating with members of an elected official's constituency, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, meal expenses are not allowable as expenses associated with constituency services under any circumstances.

d. Holiday and other greeting cards sent to constituents.

This rule is intended to implement Iowa Code Supplement sections 68A.301, 68A.302, and 68A.303.

[**ARC 7647B**, IAB 3/25/09, effective 4/29/09; **ARC 7801B**, IAB 6/3/09, effective 7/8/09]

351—4.26(68A) Transfers between candidates.

4.26(1) *Transfer of assets between different candidates.* A candidate's committee may transfer an asset to a candidate's committee established by a different candidate so long as the recipient committee pays the transferring committee the fair market value of the asset and the transaction is properly disclosed on each committee's disclosure report.

4.26(2) *Transfer of assets for same candidate.* A candidate's committee may transfer funds, assets, loans, and debts to a committee established for a different office when the same candidate established both committees. A candidate seeking to transfer funds, assets, loans, or debts under this subrule shall file either an amended statement of organization disclosing information for the new office sought or register a new committee regardless of whether the $750 financial filing threshold for the new office will be exceeded.

This rule is intended to implement Iowa Code Supplement section 68A.303.

[**ARC 7992B**, IAB 7/29/09, effective 9/2/09]

351—4.27(68A) Filing of independent expenditure statement. Pursuant to 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3, any person except a candidate, a committee filing a statement of organization, a federal committee, or an out-of-state committee that makes one or more independent expenditures in excess of $750 in the aggregate shall file Form Ind-Exp-O. A sole individual making one or more independent expenditures in excess of $750 in the aggregate shall file Form Ind-Exp-I. A committee that has registered by filing a statement of organization shall disclose an independent expenditure on the appropriate campaign disclosure report.

4.27(1) *Independent expenditure defined.* "Independent expenditure" means an expenditure as defined in 2009 Iowa Code Supplement section 68A.404(1) as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.27(2) *Independent expenditure reporting.* When applicable under 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3, and rule 351—4.27(68A), Form Ind-Exp-O shall be filed by a person and Form Ind-Exp-I shall be filed by a sole individual. Both forms shall be in a format that will enable a person or sole individual making an independent expenditure to comply with all of the reporting requirements in 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.27(3) *Place of filing.* Form Ind-Exp-O and Form Ind-Exp-I shall be filed with the board electronically via the board's Web site at www.iowa.gov/ethics.

4.27(4) *Time of filing.* Form Ind-Exp-O or Form Ind-Exp-I shall be filed within 48 hours of the person's or sole individual's making an independent expenditure exceeding $750 in the aggregate or within 48 hours of disseminating the communication to its intended audience, whichever is earlier. An

independent expenditure is deemed made at the time that the cost is incurred regardless of whether or not the costs for the independent expenditure have been billed.

4.27(5) *Failure to file.* The failure to timely file either Form Ind-Exp-O or Form Ind-Exp-I shall be subject to the imposition of civil penalties pursuant to 351—subrule 4.59(7).

4.27(6) *Attribution statement applicable.* Any person that makes an independent expenditure in any amount shall comply with the appropriate "paid for by" attribution statement pursuant to 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7, and rule 351—4.38(68A).

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 7800B**, IAB 6/3/09, effective 7/8/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a monetary or in-kind contribution, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a candidate or to a campaign committee organized under Iowa Code chapter 68A. Pursuant to 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3, foreign nationals are prohibited from making independent expenditures in relation to any state or local election in Iowa.

4.28(1) *Foreign national defined.* "Foreign national" means a person as defined in 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.28(2) *Acceptance of campaign contributions and donations from foreign nationals.* No person shall knowingly accept or receive a campaign contribution from a foreign national. No person shall knowingly accept a monetary donation from a foreign national for purposes of making an independent expenditure.

4.28(3) *Participation by foreign nationals in decisions involving election-related activity.* A foreign national shall not, directly or indirectly, participate in the decision-making process of any person with regard to such person's election-related activities. Decisions including election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office, ballot issues, or decisions involving the administration of a committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.29(68A,68B) Contributions by minors. Persons under 18 years of age may make contributions to a candidate or political committee if all of the following conditions exist:

1. The decision to contribute is made knowingly and voluntarily by the minor;
2. The funds, goods, or services contributed are owned or controlled exclusively by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, or a savings account opened and maintained exclusively in the minor's name; and
3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

This rule is intended to implement Iowa Code Supplement section 68A.404.

351—4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors.

4.30(1) *Anonymous contributions in excess of $10 prohibited.* No person shall make a contribution in excess of $10 to a committee without providing the person's name and address to the committee. The committee shall not maintain in any campaign account funds in excess of $10 that cannot be accounted for and reconciled with the committee's disclosure reports.

4.30(2) *Escheat to the state.* Any contribution in excess of $10 from an unknown source or campaign funds in excess of $10 that cannot be accounted for and reconciled shall escheat to the state of Iowa

as required by Iowa Code section 68A.501 as amended by 2007 Iowa Acts, Senate File 39, section 8. A committee required to escheat shall escheat such funds by depositing the funds into the committee's campaign account and issuing a committee check to the general fund in the same amount. The committee check shall be sent to the board office at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, for transmittal to the office of treasurer of state.

4.30(3) *Subsequent identification of source.* A committee discovering the source of any funds that have been escheated to the state may make an application to the board for a return of the funds if the following requirements are met:

a. The committee has not dissolved;

b. Documentation of the name and address of the source is provided;

c. The amount requested to be returned is in excess of $100; and

d. The application is made within 90 days of the date of the deposit in the general fund of the state of Iowa.

4.30(4) *Notice at fund-raising event.* Pursuant to Iowa Code Supplement section 68A.501, a person requested to make a contribution at a fund-raising event shall be advised that it is illegal to make a contribution in excess of $10 unless the person making the contribution also provides the person's name and address. Notice of the requirement to provide a person's name and address for a contribution in excess of $10 may be made orally or in a written statement that is displayed at the fund-raising event.

This rule is intended to implement Iowa Code section 68A.501.

351—4.31(68A) Information required for a trust to avoid a contribution in the name of another person. A contribution to a committee by a trustee solely in the name of the trust constitutes a contribution in the name of another person as prohibited in Iowa Code Supplement section 68A.502 unless the recipient committee publicly discloses the contribution as provided in this rule.

4.31(1) *Living or revocable trust.* If the contribution involves a trust identified as a revocable trust or a living trust that does not file a separate trust tax return and whose federal tax ID number is the same as the social security number of the grantor who creates the trust and who is also a trustee, the contribution shall be reported by the recipient committee as being made by the "(name) revocable (or living) trust."

4.31(2) *Other trusts.* For a contribution involving a trust that does not qualify under subrule 4.31(1), the recipient committee shall identify the trust, the trustee, and the trustor.

4.31(3) *Registering a committee.* A trust, except for a living or revocable trust, that raises or spends more than $750 for campaign activities shall register a political committee (PAC) and shall file disclosure reports. A trust, except for a living or revocable trust, that makes a one-time contribution in excess of $750 may file Form DR-OTC in lieu of filing a statement of organization and filing disclosure reports.

This rule is intended to implement Iowa Code Supplement sections 68A.402(6) and 68A.502.

351—4.32(68A) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission. For purposes of this rule, "contribution" does not include an item purchased at fair market value from an Iowa committee.

4.32(1) *Regular filings.* Out-of-state committees may choose to comply with the regular disclosure filing requirements in Iowa Code Supplement sections 68A.201 and 68A.402 by filing a statement of organization and periodic disclosure reports.

4.32(2) *Verified statement of registration.* In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code chapter 68A, the out-of-state committee shall file with the board a verified statement registration form (VSR) for each contribution in excess of $50. The VSR shall contain the following information:

a. The complete name, address and telephone number of the out-of-state committee;

b. The state or federal agency with which the out-of-state committee is registered;

c. All parent entities or other affiliates or sponsors of the out-of-state committee;

d. The purpose of the out-of-state committee;

e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;

f. The name and address of the Iowa recipient committee;

g. The date and amount of the contribution, including description if the contribution is in-kind; and

h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 68A. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 68A.503 unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

4.32(3) *Signature.* The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee. A VSR that is filed electronically using the board's Web site is deemed signed when filed.

4.32(4) *Where filed.* Every VSR filed for a contribution in excess of $50 shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, electronically using the board's Web site at www.iowa.gov/ethics, as an E-mail attachment, or by fax at (515)281-4073.

4.32(5) *When filed.* The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any contribution check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

4.32(6) *Enhanced filing.* An out-of-state committee determining that the jurisdiction under which the committee is registered does not have reporting requirements substantially similar to those of Iowa Code Supplement chapter 68A may choose to comply by enhancing the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of Iowa Code Supplement chapter 68A for the reporting period during which contributions to Iowa committees are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.32(2) and attach a signed statement that the report has been enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 68A.201(5).

[**ARC 8286B**, IAB 11/18/09, effective 12/23/09]

351—4.33(68A) Reporting of earmarked contributions. A political committee or a political party committee is permitted to receive a contribution that is earmarked to be donated to another committee. A political committee or political party committee receiving and transferring an earmarked contribution is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee or political party committee shall notify the recipient committee in writing of the name of the individual contributor and the name of the committee that orginally received the contribution. The committee ultimately receiving the earmarked contribution shall disclose on its disclosure report both the name of the individual contributor and the name of the committee that originally received and then transferred the earmarked contribution. A ballot issue committee is not permitted to transfer earmarked contributions except to another ballot issue committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.402.

[**ARC 8788B**, IAB 6/2/10, effective 7/7/10]

351—4.34(68A) Copies of reports filed by 527 Committees. Iowa Code section 68A.401A requires the board to adopt a procedure for 527 Committees that file reports with the Internal Revenue Service and engage in issue advocacy in Iowa to file copies of those reports with the board. If a 527 Committee notifies the board that it is filing reports with the Internal Revenue Service, the 527 Committee will be

deemed in compliance with Iowa Code section 68A.401A. The board will then establish on its Web site a link to the reports filed with the Internal Revenue Service, or the board will otherwise post on its Web site the reports filed with the Internal Revenue Service.

This rule is intended to implement Iowa Code section 68A.401A.

351—4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 68A.402(9), a permanent organization temporarily engaging in activity that exceeds the $750 financial filing threshold described in rule 351—4.1(68A,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 68A and this chapter. A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.35(1) *Form DR-OTC.* A permanent organization that makes a one-time contribution in excess of $750 to a committee may, in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution, file Form DR-OTC. The following information shall be disclosed on Form DR-OTC:

a. The name and address of the organization making the contribution.

b. The name and address of a contact person for the organization making the contribution.

c. The name and address of the campaign committee receiving the contribution. If the contribution is to a candidate or a candidate's committee, the source of the original funds used to make the contribution shall be disclosed.

d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.

e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.

f. The date and signature of the person filing Form DR-OTC. A Form DR-OTC that is filed electronically using the board's Web site is deemed signed when filed.

A permanent organization that makes more than one contribution is not eligible to file Form DR-OTC and is required to file a statement of organization, file disclosure reports, and file a notice of dissolution.

4.35(2) *Place of filing.* Form DR-OTC shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, filed by fax at (515)281-4073, or filed electronically using the board's Web site at www.iowa.gov/ethics.

4.35(3) *Time of filing.* Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of $750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed or electronically filed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.35(4) *Failure to register.* If the board discovers that a permanent organization has become subject to the provisions of Iowa Code Supplement chapter 68A but did not timely file a statement of organization or file Form DR-OTC, as applicable, the permanent organization is subject to the possible imposition of board sanctions.

4.35(5) *Partial refund of contribution.* A committee that receives a contribution from a permanent organization that causes the organization to become subject to the provisions of Iowa Code Supplement chapter 68A may refund all or part of a contribution to the organization so as to reduce the contribution to $750 or less and remove the organization's filing obligations.

This rule is intended to implement Iowa Code sections 68A.102(18) and 68A.402.

351—4.36(68A) Cash transactions. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, debit card, or credit card. Cash withdrawals and

"petty cash" accounts are not permitted. If a committee fundraising activity necessitates a cash drawer for making change or other cash transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate's committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as "cash advance for (describe activity, e.g., concession stand cash drawer)." Upon completion of the fundraising activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a "redeposit of cash advance for (describe activity)." The proceeds of the fundraising activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

This rule is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402A.

351—4.37(68A,68B) Record keeping.

4.37(1) *Copies of reports.* A committee shall preserve a copy of every report it files for at least three years following the filing of the report.

4.37(2) *Supporting documentation.* The documentation which supports a committee's disclosure report shall be preserved by the committee for at least five years after the due date of the report that covers the activity documented in the records; however, a committee is not required to preserve these records for more than three years from the certified date of dissolution of the committee. At a minimum, the supporting documentation shall consist of all of the following:

a. A ledger or similar record-keeping device which details all contributions received by the committee. This record shall include the name and address of each person making a contribution in excess of $10, with the date and amount of the contribution. In lieu of or in addition to a ledger, the committee may record contributions received through a receipt book or other method of individually documenting the contributions, such as by making and keeping copies of the contribution checks.

b. The check register for the committee's account(s).

c. Bank statements for the committee's account(s).

d. Copies of canceled or duplicate checks for committee expenditures, if available.

e. Copies of bills or receipts for committee expenditures.

f. For committees which pay reimbursement for committee-related mileage, copies of vehicle mileage logs, including travel dates, distance driven, and travel purpose (description of event or activity). For a candidate's committee which leases a vehicle, the mileage log shall detail all mileage driven on the vehicle, including non-committee-related mileage.

4.37(3) *Records forwarded.* An officer of a committee who is replaced by another officer shall forward within seven days any committee records to the subsequently appointed or elected committee officer. The board may grant an extension of time for good cause. The failure to forward records pursuant to this subrule may subject the former officer to board sanctions.

This rule is intended to implement Iowa Code Supplement sections 68A.203, 68A.302, 68A.402 and 68A.403 and Iowa Code section 68B.32A.

[**ARC 7998B**, IAB 7/29/09, effective 9/2/09]

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

351—4.38(68A) Political attribution statement—contents. Published material that expressly advocates for or against a clearly identified candidate or ballot issue shall contain a statement identifying the person paying for the published material. This statement is referred to as the "attribution statement." The term "published material" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, Internet Web site, television, video, or motion picture advertising, campaign sign larger than 32 square feet, or any other form of printed political advertising.

4.38(1) *Registered committee.* If the person paying for the published material is a committee that has filed a statement of organization, the words "paid for by" and the name of the committee shall appear on the material. An "independent expenditure committee" is not a "registered committee."

4.38(2) *Individual, married couple, or unregistered candidate's committee.* If the person paying for the published material is an individual, the words "paid for by" and the name and address of the individual shall appear on the material. Published material that is jointly paid for by a married couple shall include the words "paid for by" and the name and address of one member of the married couple. For purposes of this subrule, "individual" includes a candidate who has not filed a statement of organization to register a committee.

4.38(3) *Multiple individuals.* If more than one individual paid for the published material, the words "paid for by", the names of the individuals, and either the addresses of the individuals or a statement that the addresses of the individuals are on file with the Iowa ethics and campaign disclosure board shall appear on the material. The addresses shall be provided to the board and made available for public inspection.

4.38(4) *Organization or unregistered political committee.* If the person paying for the published material is an organization, the words "paid for by", the name and address of the organization, and the name of one officer of the organization shall appear on the material. For purposes of this subrule, "organization" includes an organization advocating the passage or defeat of a ballot issue but that has not filed a statement of organization to register a political committee.

4.38(5) *Pooled efforts.* If the published material is paid for by more than one person, the words "paid for by" and the identification of the persons as set out in this rule shall appear on the material.

4.38(6) *Corporations.* If the person paying for the published material is a corporation, the words "paid for by", the name and address of the corporation, and the name and title of the corporation's chief executive officer shall appear on the material.

4.38(7) *Independent expenditures.* A person, including a sole individual, making an independent expenditure shall provide the attribution statement according to the appropriate category under this rule. The attribution statement shall also include a statement that the published material was not authorized by any candidate, candidate's committee, or ballot issue committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.39(68A) Specific items exempted from or subject to attribution statement requirement; multiple pages. 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7, and rule 351—4.38(68A) require the placement of a "paid for by" attribution statement on published material that expressly advocates for or against a clearly identified candidate or ballot issue, with certain exceptions.

4.39(1) *Items exempted from requirement.* The requirement to place a "paid for by" attribution statement does not apply to the following:

a. Editorials or news articles of a media organization that are not political advertisements.

b. Small items upon which the inclusion of the attribution statement would be impracticable, such as campaign signs 32 square feet or smaller that have been placed or posted on real property, bumper stickers, pins, buttons, pens, pencils, emery boards, matchbooks and, except as set out in subrule 4.39(2), items that are smaller than 2 inches by 4 inches. For purposes of this rule, 32 square feet is the total dimension of the campaign sign regardless of whether or not both sides of the sign are used for campaign advertising.

c. T-shirts, caps, and other articles of clothing that expressly advocate for or against a candidate or ballot issue.

d. Radio advertisements, live telephone calls, or auto-generated telephone messages.

e. Published material placed by an individual who acts independently and spends $100 or less of the individual's own resources to expressly advocate the passage or defeat of a ballot issue.

4.39(2) *Items subject to requirement.* The requirement to place a "paid for by" attribution statement applies to the following:

a. Published material such as campaign signs larger than 32 square feet that have been placed or posted on real property, billboards, posters, portable sign carriers, and signs affixed or painted to the

side or top of a building or vehicle. A campaign sign placed on a building or vehicle shall contain the appropriate attribution statement regardless of the size of the sign.

b. Published material in a newspaper, magazine, shopper, or other periodical regardless of the size of the material.

c. Direct mailings, flyers, brochures, postcards, or any other form of published material that is larger than 2 inches by 4 inches and not otherwise set out in 351—4.39(68A).

d. Campaign Web sites. A blog that is not owned or controlled by a candidate or committee is not required to include an attribution statement disclosing who paid for the costs of the blog. A political advertisement on a blog is required to include the appropriate attribution statement disclosing who paid for the advertisement.

e. Television, video, and motion picture advertising. The attribution statement shall be displayed on the advertisement in a clearly readable manner for at least four seconds.

4.39(3) *Multiple pages.* If the published material consists of more than one page, the "paid for by" attribution statement need only appear on one page of the material. For a campaign Web site, the attribution statement need only appear on the home page of the site. A scratch pad need only include the attribution statement on the pad and not on each individual page of the pad.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section, 4, and by 2010 Iowa Acts, Senate File 2195, section 7.
[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.40(68A,68B) Newspaper or magazine. For the purposes of these rules and Iowa Code Supplement section 68A.405, "newspaper or magazine" means a regularly scheduled publication of news, articles of opinion, and features available to the general public which does not require membership in or employment by a specific organization.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.41(68A,68B) Apparent violations; remedial action.

4.41(1) *Administrative resolution.* In an effort to informally resolve apparent violations of the requirement to place a "paid for by" attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original published political material that did not include the attribution statement to place a correction notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original published political material. A person may also resolve a violation of the "paid for by" attribution statement by resending corrected published political material to the same portion of the public that received the original published political material and by filing a copy of the corrected material with the board.

4.41(2) *Form of correction notice.* The correction notice shall be in substantially the following form: "On (date) (describe the type of published political material) was distributed that did not state who paid for it. The (describe the type of published political material) was paid for by (insert name)."

4.41(3) *Board notice.* The board shall notify the person who paid for the original published political material of the requirements of this rule.

4.41(4) *Refusal to place correction notice.* The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.

This rule is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—4.42(56,68B) Specific items exempted from or subject to attribution statement requirement. Rescinded IAB 2/4/04, effective 3/10/04.

351—4.43(56,68B) Apparent violations; remedial actions. Rescinded IAB 2/4/04, effective 3/10/04.

DIVISION IV
CORPORATE POLITICAL ACTIVITY

351—4.44(68A,68B) Prohibited corporate activity. As provided in 2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5, a financial institution, insurance company, or corporation is prohibited from using its resources to make monetary or in-kind campaign contributions to a candidate, candidate's committee, political committee that expressly advocates for or against a candidate, or a political party committee. For purposes of this chapter, "corporate entity" shall include financial institutions, insurance companies, and corporations.

4.44(1) The prohibition on corporate political activity does not apply to any of the following:

a. An LLC, LLP, or any other organization that does not file articles of incorporation.

b. Monetary or in-kind campaign contributions to a ballot issue committee.

c. Independent expenditure communications.

d. A campaign committee using a corporate entity computer to generate and file a campaign disclosure statement or report.

4.44(2) For purposes of this rule, prohibited corporate activity shall include, but not be limited to, the following:

a. The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

b. The use of motor vehicles, telephone equipment, long-distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or communication systems of corporate entities.

c. The use of corporate entity facilities, premises, recreational facilities and housing that are not ordinarily available to the general public.

d. The furnishing of beverages and other refreshments that cost in excess of $50 and that are not ordinarily available to the general public.

e. The contributing of money of the corporate entity.

f. Any other transaction conducted between a corporate entity and a candidate, candidate's committee, political committee that expressly advocates for or against candidates, or a political party committee. Such transaction is presumed to be a corporate contribution unless it is sufficiently demonstrated to the board that the transaction should not be considered a prohibited contribution under 2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.45(68A,68B) Corporate-sponsored political committee. These rules do not prevent a corporate entity from soliciting eligible members to join or contribute to its own corporate-sponsored political committee (PAC), so long as the corporate entity adheres to the provisions of Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.46(68A) Voter education. Rescinded IAB 6/2/10, effective 5/17/10.

351—4.47(68A,68B) Permitted activity—reimbursement required. The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 351—4.44(68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

4.47(1) *Purchase or rental of office facility.* A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this

subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

4.47(2) *Use of corporate facilities to produce or mail materials.* Any person who uses the facilities of a corporate entity to produce or mail materials in connection with a candidate election is required to reimburse the corporate entity within a commercially reasonable time for the normal and usual charge for producing or mailing such materials in the commercial market. For example, if it would otherwise cost 10 cents per page to have a brochure copied at a commercial printer, the corporate entity must be reimbursed at 10 cents per page even if the overhead and operating cost is only 5 cents per page. Likewise, the corporate entity must be reimbursed at the first-class mail rate even if the direct cost to the corporate entity is less through the use of its bulk mail permit. This subrule does not affect the ability of a commercial vendor to charge an amount for postage which is less than for first-class mail where the reduced or bulk mail charge is available to all similarly situated customers without respect to the political identity of the customer.

4.47(3) *Use or rental of corporate facilities by other persons.* Persons other than stockholders, administrative officers or employees of a corporate entity who make any use of corporate facilities, such as using telephones, facsimile machines, typewriters or computers or borrowing office furniture for activity in connection with a candidate election, are required to reimburse the corporate entity within a commercially reasonable time in the amount of the normal and usual rental charge. If one or more telephones of a corporate entity are used as a telephone bank, a rebuttable presumption is established that $3 per telephone per hour, plus any actual long distance charges, is acceptable as a normal and usual rental charge.

4.47(4) *Use of airplanes and other means of transportation.*

a. *Air travel.* A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. *Other transportation.* A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

4.47(5) *Equal access not required.* For the purpose of this rule, it is not necessary that the corporate entity be in the business of selling or renting the property, good or service to the general public; further, it is not necessary that the corporate entity provide access to the same property, good or service to other candidates or committees.

4.47(6) *Commercially reasonable time.* For the purpose of this rule, a rebuttable presumption is established that reimbursement to the corporate entity within ten business days is acceptable as within a commercially reasonable time.

4.47(7) *Loans and debts.* A financial institution may make a loan to a candidate or candidate's committee so long as the loan is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.18(68A,68B). A candidate or candidate's committee may owe a debt to an insurance company, financial institution, or corporation so long as the debt is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.16(68A,68B). The repayment of a loan or debt under this subrule shall be made prior to the dissolution of the committee pursuant to rule 351—4.57(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.48(68A) Sham newspapers subject to campaign laws. Iowa Code chapter 68A provides that when a media organization discusses candidates and public affairs, the media organization does not trigger the campaign laws. 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5, directs the board to adopt a rule requiring the owner, publisher,

or editor of a sham newspaper who is using the sham newspaper to promote in any way the candidacy of any person for public office to comply with the requirements of Iowa Code chapter 68A.

4.48(1) *Factors.* In determining whether or not a publication is entitled to the press exception or is a sham newspaper that triggers the campaign laws, the board will consider the following factors:

a. Whether the publication is published and made available on a regular schedule or interval;

b. The proximity to the election in which the candidates and public affairs are discussed;

c. Whether the publication contains news items and articles of opinion of a general character separate from discussions concerning candidates and public affairs;

d. How widely the publication is circulated or is otherwise made available to the public in comparison to a targeted audience for potential campaign purposes;

e. Whether the publication discusses all candidates for a particular election or otherwise gives all candidates equal space; and

f. Whether the publication expressly advocates for the candidacy of any person.

4.48(2) *Definitions.* For purposes of this rule, the following definitions apply:

"Express advocacy" means "express advocacy" as defined in Iowa Code section 68A.102(14) and rule 351—4.53(68A).

"Media organization" means "media organization" as defined in rule 351—4.51(68A).

"Sham newspaper" means "sham newspaper" as defined in 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5.

[**ARC 7866B**, IAB 6/17/09, effective 7/22/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.49(68A,68B) Individual property. These rules do not apply to the personal or real property of corporate officers or of individuals employed or associated with a corporate entity and shall not abridge the free-speech rights and privileges of individuals.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.50(68A) Political corporations. Rescinded IAB 6/2/10, effective 5/17/10.

351—4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable. Iowa Code Supplement section 68A.503 prohibits corporations from making contributions to state or local candidates in Iowa. This prohibition does not apply to incorporated media organizations that host candidate debates described in this rule.

4.51(1) *Media organization defined.* "Media organization" means a broadcaster, cable television operator, television programmer, television producer, bona fide newspaper, magazine, or any other periodical publication. The media organization shall not be owned or controlled by a political party, political committee, or candidate.

4.51(2) *Debate structure.* The structure of the debate shall be left to the discretion of the media organization provided that at least two or more candidates for the particular office are invited to participate. The debate shall not be structured to promote or advance one candidate over another. In choosing which candidates to invite to a debate, the media organization shall use good faith editorial judgment that is reasonable and viewpoint-neutral.

4.51(3) *Funding debates.* A media organization may use its own funds and may accept funds donated by corporations to defray costs incurred in staging a candidate debate under this rule.

4.51(4) *Contribution reporting inapplicable.* The costs of a debate under this rule are not a reportable monetary or in-kind contribution under Iowa Code Supplement section 68A.402.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.503.

351—4.52(68A,68B) Corporate involvement with political committee funds.

4.52(1) *Corporate payroll deductions.* For purposes of interpretation of Iowa Code Supplement section 68A.503, the administrative functions performed by a corporation (profit or nonprofit corporation including, but not limited to, a bank, savings and loan institution, credit union or insurance

company) to make payroll deductions for an employee organization's political committee and to transmit the deductions in lump sum to the treasurer of the political committee shall not be a prohibited corporate activity so long as the corporate entity is serving only as a conduit for the contributions.

4.52(2) *Electronic transfer of deposits.* A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

4.52(3) *Allowable costs of administration.* For the purposes of interpreting Iowa Code Supplement section 68A.503, subsection 3, which permits an entity otherwise forbidden from contributing to a candidate or a candidate's committee for "financing the administration of a committee sponsored by that entity," the following are considered to be allowable costs of administration:

a. Full or partial compensation for political committee staff, which may include both wages and benefits.

b. Expenses of transportation and travel incurred by political committee staff; however, this does not include expenses of transportation or travel if provided by a political committee or a staff member to a candidate, nor does this include expenses of meals or events held on behalf of a candidate.

c. Printing and office supplies related to routine office administration so long as the printing and supplies are not used to expressly advocate for or against any candidate.

d. Postage and stationery, including that necessary for mailing contributions to specific candidates. Postage and stationery necessary for distributing political material expressly advocating a specific candidate to persons other than the committee membership are not permitted.

e. Expenses of maintaining committee records and preparing financial disclosure reports, including costs associated with services provided by an accountant or other professional.

f. Promotional materials, such as stickers, pens, and coffee cups, so long as the items promote the political committee itself, but not a specific candidate.

An item which is excluded by this subrule from being an allowable cost of administration may still be provided by the committee, so long as that cost is paid for from contributions or other sources of funds other than the parent entity.

This rule is intended to implement Iowa Code Supplement section 68A.503.

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

351—4.53(68A,68B) Express advocacy; in-kind contributions; independent expenditures—definitions. For the purposes of Iowa Code Supplement chapter 68A, the following definitions apply.

4.53(1) *Express advocacy.* "Express advocacy" means any communication as defined in Iowa Code Supplement section 68A.102(14). "Express advocacy" includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

4.53(2) *In-kind contribution.* "In-kind contribution" means the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee. An in-kind contribution also includes any expenditure that meets the definition of a coordinated expenditure in subrule 4.53(4).

4.53(3) *Independent expenditure.* "Independent expenditure" means "independent expenditure" as defined in 2009 Iowa Code Supplement section 68A.404(1) as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.53(4) *Coordinated expenditure.*

a. "Coordinated expenditure" means an expenditure made with the knowledge and approval of a candidate, candidate's committee, political party committee, or political committee. "Coordinated expenditure" also means that there has been arrangement, coordination, or direction by the candidate,

candidate's committee, political party committee, or political committee, or an agent or officer of the candidate's committee or a ballot issue committee prior to the procurement or purchase of the good or service, or the publication, distribution, display, or broadcast of an express advocacy communication.

b. An expenditure will be presumed to be coordinated when it is:

(1) Based on information provided to the expending person by the candidate, the candidate's committee, or the ballot issue committee with a view toward having an expenditure made; or

(2) Made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate's committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee, or the ballot issue committee.

c. Pursuant to 2009 Iowa Code Supplement section 68A.404(7) as amended by 2010 Iowa Acts, Senate File 2354, section 3, a person making an independent expenditure shall not engage or retain an advertising firm or consultant that has also been engaged or retained within the prior six months by the candidate, candidate's committee, or ballot issue PAC that is benefited by the independent expenditure. "Engage or retain" shall not include the purchase of goods or products from an advertising firm or consultant when the advertising firm or consultant does not provide guidance, assistance, or advice to the person making the purchase concerning the good or product.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

DIVISION VI
COMMITTEE DISSOLUTION

351—4.54(68A) Committee dissolution; disposition of property; resolution of loans or debts. A committee shall not dissolve until all loans and debts are paid, forgiven, or transferred, and the remaining funds in the committee's campaign account are distributed according to Iowa Code sections 68A.302 and 68A.303 and rule 351—4.25(68A,68B). In the case of a candidate's committee, the disposition of all campaign property with a residual value of $100 or more must be accomplished before dissolution.

4.54(1) *Manner of disposition—candidates' committees.* A candidate's committee shall dispose of campaign property with a residual value of $100 or more through a sale of the property at fair market value, with proceeds treated as any other campaign funds, or through donation of the property as set out in Iowa Code section 68A.303(1). The candidate's committee shall disclose on the committee's campaign report the manner of disposition.

4.54(2) *Resolution of loans and debts.* The loans and debts of a committee may be transferred, assumed, or forgiven except that a loan or debt owed to a financial institution, insurance company, or corporation may not be forgiven unless the committee is a ballot issue committee. The committee shall disclose on the committee's campaign report the transfer, assumption, or forgiveness of a loan or debt on the appropriate reporting schedules.

4.54(3) *Settlement of disputed loans and debts.* A dispute concerning a loan or debt may be resolved for less than the original amount if the committee discloses on the committee's campaign report the resolution of the dispute. If the dispute is between a candidate's committee and a financial institution, insurance company, or corporation, the candidate's committee shall submit a written statement to the board describing the loan or debt, the controversy, and the steps taken to settle or collect the loan or debt. The board will review the statement and determine whether to permit the candidate's committee to report the loan or debt as discharged.

4.54(4) *Unavailable creditor.* If the committee cannot locate a person to whom it owes a loan or debt, the committee shall provide the board with a written statement describing the steps the committee has taken to locate the creditor and shall request direction from the board as to what additional steps, if any, should be taken. If a candidate's committee owes a loan or debt to a financial institution, insurance company, or corporation, resolution of the matter shall include payment to a charitable organization or the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.55(68A) Statement of dissolution; final report; final bank statement.

4.55(1) *Statement of dissolution.* A statement of dissolution (Form DR-3) shall be filed after the committee terminates its activity, disposes of its funds and assets, and has discharged all of its loans and debts. The statement shall be either typewritten or printed legibly in black ink and shall be signed by the person filing the statement. A statement of dissolution filed electronically using the board's Web site is deemed signed when filed.

4.55(2) *Place of filing.* Statements of dissolution shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.55(3) *Time of filing.* A committee seeking dissolution shall file a statement of dissolution within 30 days of terminating activity, disposing of funds and assets, and discharging all loans and debts. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the required due date. Faxed or electronically filed statements must be submitted at or before 11:59 p.m. on the required due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the next working day.

4.55(4) *Final report.* The committee shall file a final report disclosing the committee's closing transactions. Once the board staff reviews the report and determines that the committee has complied with all of the requirements of Iowa Code chapter 68A, the committee is no longer required to file campaign reports. If the board staff determines that the committee has not complied with all of the requirements of Iowa Code chapter 68A, the committee, prior to being dissolved, shall resolve all issues.

4.55(5) *Final bank statement.* A copy of the committee's final bank statement showing the committee's closing transactions and a zero balance shall be attached to or submitted with the committee's final report. A committee participating in an election at the county, city, school, or other political subdivision level, an independent expenditure committee, or a sole individual making an independent expenditure is not required to file a final bank statement unless requested to do so by the board. A committee seeking a waiver from the requirements of this subrule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code section 68A.402B as amended by 2010 Iowa Acts, Senate File 2354, section 2.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.56(68A,68B) Disposition of property for dissolution of committee. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.57(68A,68B) Assumption or settlement of debts and obligations. Rescinded IAB 6/22/05, effective 7/27/05.

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports. A campaign disclosure report is deemed filed late if it is not received by the board on or before the date and time the report is mandated to be filed pursuant to statute or board rule.

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 8290B**, IAB 11/18/09, effective 12/23/09]

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) *Administrative resolution.* In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). A person using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic filing system is not properly functioning and causes the person to be unable to timely file the report.

4.59(2) *County and local committee assessments.* County, county statutory, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$20	$50
15 to 30 consecutive days delinquent	$50	$100
31 to 45 consecutive days delinquent	$100	$200

4.59(3) *State committee assessments.* Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$50	$100
15 to 30 consecutive days delinquent	$100	$200
31 to 45 consecutive days delinquent	$200	$300

4.59(4) *Supplementary report assessments.* General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a $200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a $400 civil penalty for filing a supplementary report one or more days late.

4.59(5) *Special election assessments.* The committees of general assembly candidates to fill vacancies in special elections shall be assessed a $100 civil penalty for filing a special election report one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a $200 civil penalty for filing a special election report one or more days late.

4.59(6) *Verified statement of registration assessments.* An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule 351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution, shall be assessed a $25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be $50.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated.

4.59(7) *Independent expenditure assessment.* An individual who is delinquent in timely filing Form Ind-Exp-I shall be assessed a $25 civil penalty. If there is a repeat delinquency by the individual in timely filing Form Ind-Exp-I within a 12-month period, the penalty shall be $50. A person that is designated by the board as an independent expenditure committee that fails to timely file Form Ind-Exp-O shall be assessed a $50 civil penalty. If there is a repeat delinquency by the person in timely filing Form Ind-Exp-O within a 12-month period, the penalty shall be $100.

4.59(8) *Form DR-OTC assessment.* A permanent organization that has not previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a $20 civil penalty. A permanent organization that has previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a $20 civil penalty.

4.59(9) *Additional sanctions.* The issuance of a civil penalty under this rule does not prohibit the board from imposing sanctions pursuant to the process set out in Iowa Code chapter 68B and rule 351—9.4(68B) if the board determines that there was evidence of an intentional failure to timely file the report.

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 7645B**, IAB 3/25/09, effective 4/29/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty by filing a Petition for Waiver of Civil Penalty form. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 7996B**, IAB 7/29/09, effective 9/2/09]

351—4.61(68B) Contested case challenge.

4.61(1) *Request.* If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

4.61(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

4.61(3) *Failure to request hearing.* Failure to request a contested case proceeding to appeal the board's decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) *Where payment made.* Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) *Who may make payment.* Payment may be made at the person's discretion, including from funds of a committee or from personal funds of an officer of a committee.

4.62(3) *Disclosure of payment.* Rescinded IAB 3/25/09, effective 4/29/09.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

[**ARC 7648B**, IAB 3/25/09, effective 4/29/09]

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[1] Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 8
EXECUTIVE BRANCH LOBBYING
[Prior to 11/26/03, see 351—Ch 13]

351—8.1(68B) Executive branch lobbying defined. "Executive branch lobbying" means acting directly to encourage the passage, defeat, approval, veto, or modification of legislation, a rule, or an executive order by a state agency or any statewide elected official. For purposes of this chapter, "state agency" does not include the legislative branch of state government.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.2(68B) Executive branch lobbyist defined. "Executive branch lobbyist" means an individual who by acting directly does at least one of the following:

1. Receives compensation for engaging in executive branch lobbying.
2. Is a designated representative of an organization that has as one of its purposes engaging in executive branch lobbying.
3. Represents the position of a federal, state, or local agency in which the person serves or is employed as the representative designated to engage in executive branch lobbying.
4. Makes expenditures of more than $1,000 in a calendar year to communicate in person for the purpose of engaging in executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.3(68B) Individuals not considered executive branch lobbyists. The following individuals are not considered to be executive branch lobbyists:

1. Officials and employees of a political party that is organized in the state of Iowa and that meets the requirements of Iowa Code section 43.2, when the officials and employees represent the political party in an official capacity.
2. Representatives of the news media only when engaged in the reporting and dissemination of news and editorials.
3. All federal, state, and local elected officials, while performing the duties and responsibilities of office.
4. Individuals whose activities are limited to appearances to give testimony or provide information or assistance at public hearings of state agencies or who are giving testimony or providing information or assistance at the request of public officials or employees.
5. Members of the staff of the United States Congress or the Iowa general assembly.
6. Agency officials and employees while they are engaged in activities within the agency in which they serve or are employed or with another agency within which an official's or employee's agency is involved in a collaborative project.
7. An individual who is a member, director, trustee, officer, or committee member of a business, trade, labor, farm, professional, religious, education, or charitable association, foundation, or organization and who is not paid compensation or is not specifically designated as an executive branch lobbyist.
8. Individuals whose activities are limited to submitting data, views, or arguments in writing, or requesting an opportunity to make an oral presentation under Iowa Code section 17A.4(1).
9. Individuals whose activities are limited to monitoring or following the progress of legislation, a rule, or an executive order, but who do not engage in executive branch lobbying.
10. Individuals who represent a client in responding to a request for proposal or otherwise receiving a contract or grant from a state agency.
11. Individuals who represent a client involved in a legal dispute with the state, including a contested case proceeding.
12. Individuals advocating for or against the appointment of a particular individual to a board or commission of the state.

Individuals who are uncertain as to whether or not they are considered executive branch lobbyists should contact the board for guidance prior to engaging in any executive branch lobbying.

This rule is intended to implement Iowa Code section 68B.2(13).

351—8.4(68B) Executive branch lobbyist client defined. "Executive branch lobbyist client" means a private person or a federal, state, or local governmental entity that pays compensation to or designates an individual to be a lobbyist before the executive branch.

This rule is intended to implement Iowa Code section 68B.2(6).

351—8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited.

8.5(1) *Lobbyist compensation defined.* "Lobbyist compensation" means any money, thing of value, or financial benefit conferred in return for engaging in executive branch lobbying.

8.5(2) *Contingency fee lobbying prohibited.* No person shall offer, nor shall any person accept, compensation contingent upon the outcome of executive branch lobbying services rendered or to be rendered. Complaints or information alleging a violation of this subrule shall be filed with the board and governed by Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.2(7).

351—8.6(68B) Executive branch lobbying expenditures. Rescinded IAB 6/2/10, effective 7/7/10.

351—8.7(68B) Lobbyist registration required.

8.7(1) *Time of filing.* Any individual engaging in executive branch lobbying activity shall register by filing an executive branch lobbyist registration statement with the board on or before the day the lobbying activity begins. Registration expires upon the commencement of a new calendar year. Persons wishing to register for a new calendar year may do so on or after December 1 of the previous year.

8.7(2) *Place of filing.* Executive branch lobbyist registration statements shall be filed with the board electronically through the board's Web site at www.iowa.gov/ethics.

8.7(3) *Information required.* The following information shall be disclosed on the executive branch lobbyist registration statement:

a. The lobbyist's name and business address. The lobbyist's residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist's office or residence.

b. A general description of the issues or interests that the lobbyist might follow and a list of agencies or offices that may be lobbied.

c. Whether or not the lobbyist is a governmental official representing the official position of the lobbyist's department, agency, or governmental entity.

d. Each of the lobbyist's clients, including the name and address of the client, a contact person and job title, and the contact person's telephone number. An E-mail address is optional.

e. The lobbyist's signature and date of filing. Registration statements filed electronically through the board's Web site are deemed signed and dated when filed.

8.7(4) *Amendment to registration.* Any change or addition to the information in an executive branch lobbyist's registration statement shall be filed with the board within ten days after the change or addition is made known to the lobbyist. The lobbyist may file changes or additions by electronically filing an amended registration statement.

8.7(5) *Failure to timely file registration.* An individual who fails to file an executive branch lobbyist registration statement before engaging in executive branch lobbying activities in violation of Iowa Code section 68B.36 may be subject to sanctions by the board as permitted under Iowa Code chapter 68B or rule 351—9.4(68B).

This rule is intended to implement Iowa Code section 68B.36 as amended by 2010 Iowa Acts, House File 2109, section 8.

[**ARC 8483B**, IAB 1/13/10, effective 1/25/10; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.8(68B) Executive branch periodic lobbyist reports. Rescinded IAB 6/2/10, effective 7/7/10.

351—8.9(68B) Executive branch lobbyist client reporting.

8.9(1) Every executive branch lobbyist client shall file reports that contain the following information:

a. The name and address of the client, including a contact person.

b. The name of the client's lobbyists.

c. The amount of all salaries, fees, retainers, and reimbursements paid by the client to each lobbyist for engaging in lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report $0.00 as compensation paid. In the case of a salaried position when lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in lobbying activities.

d. The signature of the client's contact person and the date signed. Lobbyist client reports filed electronically through the board's Web site are deemed signed and dated when filed.

8.9(2) Place of filing. Executive branch lobbyist client reports shall be filed with the board electronically through the board's Web site at www.iowa.gov/ethics.

8.9(3) Time of filing. An executive branch lobbyist client report shall be filed on or before July 31. The report must be electronically received by the board on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

This rule is intended to implement Iowa Code section 68B.38.

[Editorial change: IAC Supplement 4/8/09; **ARC 8483B**, IAB 1/13/10, effective 1/25/10; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.10(68B) Session function registrations and reports. Pursuant to Iowa Code section 68B.22(4)*"s"* as amended by 2010 Iowa Acts, House File 2109, section 1, a sponsor of a qualified function is required to file with the general assembly and the board a registration notice prior to the function and a report within 28 days of the function. The board will deem filings with the general assembly as acceptable filings with the board. The board will establish links on its Web site to the general assembly's Web site where the registration notices and reports are posted. The failure of a sponsor to timely file either a registration notice or a report may subject the sponsor to sanctions by the board as permitted under Iowa Code chapter 68B and rule 351—9.4(68B) separate from any sanctions imposed by the general assembly.

This rule is intended to implement Iowa Code section 68B.22(4)*"s"* as amended by 2010 Iowa Acts, House File 2109, section 1, and Iowa Code section 68B.32A(5) as amended by 2010 Iowa Acts, Senate File 2067, section 4.

[**ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.11(68B) Penalties for delinquent reports.

8.11(1) *Late client report.* An executive branch lobbyist client who fails to file an executive branch lobbyist client report on or before the required due date shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	Amount
1 to 14	$25
15 to 30	$50
31 and over	$100

8.11(2) *Additional penalty.* If an executive branch lobbyist client fails to file a required report or fails to file an accurate report, a contested case proceeding may be held to determine whether a violation has occurred. If, after a contested case proceeding, it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action so imposed would be in addition to the automatically assessed penalty in this rule.

This rule is intended to implement Iowa Code section 68B.32A(5) as amended by 2010 Iowa Acts, Senate File 2067, section 4, and Iowa Code section 68B.32A(9).

[Editorial change: IAC Supplement 4/8/09; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.12(68B) Request for waiver of penalty. An executive branch lobbyist client that believes there are mitigating circumstances that prevented the timely filing of a report may make a written request to the board for waiver of the penalty. The board must receive the request for waiver within 30 days of the executive branch lobbyist client's being notified of the civil penalty assessment by filing a Petition for Waiver of Civil Penalty form. Waivers will be granted only for exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or request a contested case proceeding pursuant to rule 351—8.13(68B) to appeal the board's decision.

This rule is intended to implement Iowa Code section 68B.32A(5) as amended by 2010 Iowa Acts, Senate File 2067, section 4, and Iowa Code section 68B.32A(9).
[Editorial change: IAC Supplement 4/8/09; **ARC 7996B**, IAB 7/29/09, effective 9/2/09; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.13(68B) Contested case proceeding.

8.13(1) *Request.* If an executive branch lobbyist client accepts administrative resolution of a matter through the payment of an assessed civil penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny a request or grant a partial waiver of an assessed civil penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

8.13(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

8.13(3) *Failure to request a contested case proceeding.* The failure to request a contested case proceeding to appeal the board's decision on a waiver request is the failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code section 68B.32A(5) as amended by 2010 Iowa Acts, Senate File 2067, section 4, and Iowa Code sections 68B.32A(9) and 68B.33.
[Editorial change: IAC Supplement 4/8/09; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

351—8.14(68B) Payment of penalty. An assessed civil penalty shall be paid by check or money order and shall be made payable to the State of Iowa General Fund and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The payment shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code sections 68B.32A(5) and 68B.32A(9).
[Editorial change: IAC Supplement 4/8/09]

351—8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited. Pursuant to Iowa Code section 68A.504, individuals who are registered in Iowa as either executive branch or legislative branch lobbyists are prohibited from contributing to, acting as an agent or intermediary for contributions to, or arranging for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session. This prohibition includes a contribution that is mailed during the legislative session but received by the candidate after the legislative session has adjourned.

8.15(1) *Application to governor.* The prohibition on contributions to the governor or a gubernatorial candidate during session extends for an additional 30 days following the adjournment of a regular legislative session allowed for the signing of bills.

8.15(2) *Exceptions.* The prohibition on contributions during the regular legislative session does not apply to any of the following:

a. Contributions to an elected state official, member of the general assembly, or other state official who has taken affirmative action to seek nomination or election to a federal elective office so long as the lobbyist's contribution is placed into the candidate's federal account.

b. Contributions to a candidate for state office who filed nomination papers for a special election called or held during the regular legislative session if the candidate receives the contribution at any time during the period commencing on the date on which at least two candidates have been nominated for the office and ending on the date on which the election is held. However, elected state officials are prohibited from soliciting lobbyists for contributions to another candidate for state office when a special election is held during the regular legislative session.

c. Contributions made during a special legislative session. In the case of the governor and a gubernatorial candidate, this exception also includes the 30 days following a special legislative session unless that time period falls within 30 days of adjournment of the regular legislative session.

d. Contributions from a lobbyist's personal funds that a lobbyist makes to the lobbyist's own campaign for public office.

8.15(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code section 68A.504 involving either executive branch lobbyists or legislative branch lobbyists shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

8.15(4) *Date of session.* For purposes of Iowa Code section 68A.504 and this rule, a legislative session commences at 12 a.m. of the first day of the legislative session through 11:59:59 p.m. of the day that the legislative session adjourns sine die.

This rule is intended to implement Iowa Code section 68A.504.

[**ARC 7651B**, IAB 3/25/09, effective 4/29/09; Editorial change: IAC Supplement 4/8/09]

351—8.16(68B) Lobbyists prohibited from making loans. Pursuant to Iowa Code section 68B.24, an executive branch official, executive branch employee, or a candidate for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

8.16(1) *Offer of loan prohibited.* An executive branch lobbyist shall not directly or indirectly offer or make a loan to an executive branch official, executive branch employee, or a candidate for statewide office.

8.16(2) *Exception.* The prohibitions in Iowa Code section 68B.24 do not apply to loans made in the ordinary course of business. "Ordinary course of business" means the loan is made by a person who is regularly engaged in a business that makes loans to members of the general public, and the finance charges and other terms of the loan are the same or substantially similar to the finance charges and loan terms that are available to members of the general public.

8.16(3) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code section 68B.24 by an executive branch official, executive branch employee, candidate for statewide office, or an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.24.

351—8.17(68B) Ban on certain lobbying activities by government personnel. Executive branch officials and executive branch employees are prohibited by Iowa Code section 68B.5A from engaging in certain types of lobbying activities during the time in which these officials and employees serve or are employed by the state. In addition, Iowa Code section 68B.5A prohibits executive branch officials and executive branch employees from accepting, under certain situations, employment as lobbyists within two years of leaving state government.

8.17(1) *Lobbying restrictions—statewide elected officials and executive or administrative heads.*

a. A person who serves as a statewide elected official, the executive or administrative head of an agency, or the deputy executive or administrative head of an agency shall not act as a lobbyist during the time in which the person serves or is employed by the state unless the person is designated to represent the official position of the person's agency.

b. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government except as provided in subrule 8.17(4).

8.17(2) *Lobbying restrictions—employees of statewide elected officials and other department or agency employees.*

a. The head of a major subunit of a department or independent state agency whose position involves substantial exercise of administrative discretion or the expenditure of public funds or a full-time employee of an office of a statewide elected official whose position involves substantial exercise of administrative discretion or the expenditure of public funds shall not act as a lobbyist during the time in which the person is employed by the state before the agency that the person is employed by or before state agencies, officials, or employees with whom the person has substantial or regular contact as part of the person's duties, unless the person is designated to represent the official position of the person's agency.

b. A person subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying before the agency that the person was employed by or before state agencies, officials, or employees with whom the person had substantial and regular contact as part of the person's former duties except as provided in subrule 8.17(4).

8.17(3) *Lobbying restrictions—state employees with conflicts of interest.* A state employee who is not included in subrule 8.17(1) or 8.17(2) shall not act as a lobbyist in relation to any particular case, proceeding, or application with respect to which the person is directly concerned and personally participates as part of the person's employment, unless the person is designated to represent the official position of the person's agency. Persons subject to this prohibition may not accept employment as a lobbyist for two years after leaving state government if the employment involves lobbying in relation to any particular case, proceeding, or application with respect to which the person was directly concerned and personally participated as part of the person's employment.

8.17(4) *Exception.* As provided in Iowa Code section 68B.5A(7), the prohibition on accepting employment as a lobbyist does not apply to a person who, within two years of leaving state service or employment, is elected to, appointed to, or employed by another office of the state, an office of a political subdivision of the state, or the federal government and represents the position of the new office or employment.

8.17(5) *Complaints.* Complaints or information provided to the board alleging a violation of Iowa Code section 68B.5A by an executive branch official or an executive branch employee shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.5A.

[**ARC 8002B**, IAB 7/29/09, effective 9/2/09]

351—8.18(68B) False communications prohibited.

8.18(1) *False material fact.* An executive branch lobbyist shall not intentionally deceive or attempt to deceive any executive branch official or any executive branch employee in regard to a material fact pertinent to an administrative rule, legislation, or an executive order.

8.18(2) *False communication.* An executive branch lobbyist shall not cause a communication or an executive branch lobbyist registration statement to be sent to an executive branch official or an executive branch employee in the name of either of the following:

a. A fictitious person; or

b. A real person except with the consent of that person.

8.18(3) *Complaints.* Complaints or information provided to the board alleging a violation of this rule by an executive branch lobbyist shall be filed with the board and governed by the procedures in Iowa Code sections 68B.32B through 68B.32D.

This rule is intended to implement Iowa Code section 68B.32A(13).

[Editorial change: IAC Supplement 4/8/09; **ARC 7990B**, IAB 7/29/09, effective 9/2/09]

351—8.19(68B) Advisory opinions. Any person under the board's jurisdiction that is affected by Iowa Code chapter 68B or 351—Chapter 8 may seek an advisory opinion from the board pursuant to rules 351—1.2(68B) and 1.3(68B). The purpose of a board opinion is to apply a statute or rule to a

particular factual situation. Advice contained in a board opinion, if followed, constitutes a defense to a subsequently filed complaint.

This rule is intended to implement Iowa Code section 68B.32A(12).

[Editorial change: IAC Supplement 4/8/09]

351—8.20(68) Retention and availability of filed forms.

8.20(1) *Public record.* All forms filed under this chapter are public records and shall be available in the board office for inspection and copying. A filed form shall be retained by the board for a period of at least five years from the date the form was filed.

8.20(2) *Internet access.* Forms filed under this chapter shall be accessible for viewing via the board's Web site at www.iowa.gov/ethics as follows:

a. A list of registered executive branch lobbyists and executive branch lobbyist clients for the current calendar year and the two previous calendar years.

b. An executive branch lobbyist client report for a period of at least three years from the report due date.

c. A session function registration notice and a session function reporting form for as long as the general assembly posts the session function registration notice and a session function reporting form on the general assembly's Web site.

This rule is intended to implement Iowa Code section 68B.32A(5) as amended by 2010 Iowa Acts, Senate File 2067, section 4.

[Editorial change: IAC Supplement 4/8/09; **ARC 8805B**, IAB 6/2/10, effective 7/7/10]

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◊ Two or more ARCs

TITLE VIII
MEDICAL ASSISTANCE

CHAPTER 75
CONDITIONS OF ELIGIBILITY

[Ch 75, 1973 IDR, renumbered as Ch 90]
[Prior to 7/1/83, Social Services[770] Ch 75]
[Prior to 2/11/87, Human Services[498]]

DIVISION I
GENERAL CONDITIONS OF ELIGIBILITY, COVERAGE GROUPS, AND SSI-RELATED PROGRAMS

441—75.1(249A) Persons covered.

75.1(1) *Persons receiving refugee cash assistance.* Medical assistance shall be available to all recipients of refugee cash assistance. Recipient means a person for whom a refugee cash assistance (RCA) payment is received and includes persons deemed to be receiving RCA. Persons deemed to be receiving RCA are:

a. Persons denied RCA because the amount of payment would be less than $10.

b. Rescinded IAB 7/30/08, effective 10/1/08.

c. Persons who are eligible in every respect for refugee cash assistance (RCA) as provided in 441—Chapter 60, but who do not receive RCA because they did not make application for the assistance.

75.1(2) Rescinded IAB 10/8/97, effective 12/1/97.

75.1(3) *Persons who are ineligible for Supplemental Security Income (SSI) because of requirements that do not apply under Title XIX of the Social Security Act.* Medicaid shall be available to persons who would be eligible for SSI except for an eligibility requirement used in that program which is specifically prohibited under Title XIX.

75.1(4) *Beneficiaries of Title XVI of the Social Security Act (supplemental security income for the aged, blind and disabled) and mandatory state supplementation.* Medical assistance will be available to all beneficiaries of the Title XVI program and those receiving mandatory state supplementation.

75.1(5) *Persons receiving care in a medical institution who were eligible for Medicaid as of December 31, 1973.* Medicaid shall be available to all persons receiving care in a medical institution who were Medicaid members as of December 31, 1973. Eligibility of these persons will continue as long as they continue to meet the eligibility requirements for the applicable assistance programs (old-age assistance, aid to the blind or aid to the disabled) in effect on December 31, 1973.

75.1(6) *Persons who would be eligible for supplemental security income (SSI), state supplementary assistance (SSA), or the family medical assistance program (FMAP) except for their institutional status.* Medicaid shall be available to persons receiving care in a medical institution who would be eligible for SSI, SSA, or FMAP if they were not institutionalized.

75.1(7) *Persons receiving care in a medical facility who would be eligible under a special income standard.*

a. Subject to paragraphs *"b"* and *"c"* below, Medicaid shall be available to persons who:

(1) Meet level of care requirements as set forth in rules 441—78.3(249A), 441—81.3(249A), and 441—82.7(249A).

(2) Receive care in a hospital, nursing facility, psychiatric medical institution, intermediate care facility for the mentally retarded, or Medicare-certified skilled nursing facility.

(3) Have gross countable monthly income that does not exceed 300 percent of the federal supplemental security income benefits for one.

(4) Either meet all supplemental security income (SSI) eligibility requirements except for income or are under age 21. FMAP policies regarding income and age do not apply when determining eligibility for persons under the age of 21.

b. For all persons in this coverage group, income shall be considered as provided for SSI-related coverage groups under subrule 75.13(2). In establishing eligibility for persons aged 21 or older for this coverage group, resources shall be considered as provided for SSI-related coverage groups under subrule 75.13(2).

c. Eligibility for persons in this group shall not exist until the person has been institutionalized for a period of 30 consecutive days and shall be effective no earlier than the first day of the month in which the 30-day period begins. A "period of 30 days" is defined as being from 12 a.m. of the day of admission to the medical institution, and ending no earlier than 12 midnight of the thirtieth day following the beginning of the period.

(1) A person who enters a medical institution and who dies prior to completion of the 30-day period shall be considered to meet the 30-day period provision.

(2) Only one 30-day period is required to establish eligibility during a continuous stay in a medical institution. Discharge during a subsequent month, creating a partial month of care, does not affect eligibility for that partial month regardless of whether the eligibility determination was completed prior to discharge.

(3) A temporary absence of not more than 14 full consecutive days during which the person remains under the jurisdiction of the institution does not interrupt the 30-day period. In order to remain "under the jurisdiction of the institution" a person must first have been physically admitted to the institution.

75.1(8) *Certain persons essential to the welfare of Title XVI beneficiaries.* Medical assistance will be available to the person living with and essential to the welfare of a Title XIX beneficiary provided the essential person was eligible for medical assistance as of December 31, 1973. The person will continue to be eligible for medical assistance as long as the person continues to meet the definition of "essential person" in effect in the public assistance program on December 31, 1973.

75.1(9) *Individuals receiving state supplemental assistance.* Medical assistance shall be available to all recipients of state supplemental assistance as authorized by Iowa Code chapter 249. Medical assistance shall also be available to the individual's dependent relative as defined in 441—subrule 51.4(4).

75.1(10) *Individuals under age 21 living in a licensed foster care facility or in a private home pursuant to a subsidized adoption arrangement for whom the department has financial responsibility in whole or in part.* When Iowa is responsible for foster care payment for a child pursuant to Iowa Code section 234.35 and rule 441—156.20(234) or has negotiated an adoption assistance agreement for a child pursuant to rule 441—201.5(600), medical assistance shall be available to the child if:

a. The child lives in Iowa and is not otherwise eligible under a category for which federal financial participation is available; or

b. The child lives in another state and is not eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act, notwithstanding the residency requirements of 441—75.10(249A) and 441—75.53(249A).

75.1(11) *Individuals living in a court-approved subsidized guardianship home for whom the department has financial responsibility in whole or in part.* When Iowa is responsible for a subsidized guardianship payment for a child pursuant to 441—Chapter 204, medical assistance will be available to the child under this subrule if the child is living in a court-approved subsidized guardianship home and either:

a. The child lives in Iowa and is not eligible for medical assistance under a category for which federal financial participation is available due to reasons other than:

(1) Failure to provide information, or

(2) Failure to comply with other procedural requirements; or

b. Notwithstanding the residency requirements of 441—75.10(249A) and 441—75.53(249A), the child lives in another state and is not eligible for benefits from the other state pursuant to a program funded under Title XIX of the federal Social Security Act due to reasons other than:

(1) Failure to provide information, or

(2) Failure to comply with other procedural requirements.

75.1(12) *Persons ineligible due to October 1, 1972, social security increase.* Medical assistance will be available to individuals and families whose assistance grants were canceled as a result of the increase in social security benefits October 1, 1972, as long as these individuals and families would be eligible for an assistance grant if the increase were not considered.

75.1(13) *Persons who would be eligible for supplemental security income or state supplementary assistance but for social security cost-of-living increases received.* Medical assistance shall be available to all current social security recipients who meet the following conditions:

a. They were entitled to and received concurrently in any month after April 1977 supplemental security income and social security or state supplementary assistance and social security, and

b. They subsequently lost eligibility for supplemental security income or state supplementary assistance, and

c. They would be eligible for supplemental security income or state supplementary assistance if all of the social security cost-of-living increases which they and their financially responsible spouses, parents, and dependent children received since they were last eligible for and received social security and supplemental security income (or state supplementary assistance) concurrently were deducted from their income. Spouses, parents, and dependent children are considered financially responsible if their income would be considered in determining the applicant's eligibility.

75.1(14) *Family medical assistance program (FMAP).* Medicaid shall be available to children who meet the provisions of rule 441—75.54(249A) and to the children's specified relatives who meet the provisions of subrule 75.54(2) and rule 441—75.55(249A) if the following criteria are met.

a. In establishing eligibility of specified relatives for this coverage group, resources are considered in accordance with the provisions of rule 441—75.56(249A) and shall not exceed $2,000 for applicant households or $5,000 for member households. In establishing eligibility for children for this coverage group, resources of all persons in the eligible group, regardless of age, shall be disregarded.

b. Income is considered in accordance with rule 441—75.57(249A) and does not exceed needs standards established in rule 441—75.58(249A).

c. Rescinded IAB 11/1/00, effective 1/1/01.

75.1(15) *Child medical assistance program (CMAP).* Medicaid shall be available to persons under the age of 21 if the following criteria are met:

a. Financial eligibility shall be determined for the family size of which the child is a member using the income standards in effect for the family medical assistance program (FMAP) unless otherwise specified. Income shall be considered as provided in rule 441—75.57(249A). Additionally, the earned income disregards as provided in paragraphs 75.57(2)*"a," "b," "c,"* and *"d"* shall be allowed for those persons whose income is considered in establishing eligibility for the persons under the age of 21 and whose needs must be included in accordance with paragraph 75.58(1)*"a"* but who are not eligible for Medicaid. Resources of all persons in the eligible group, regardless of age, shall be disregarded. Unless a family member is voluntarily excluded in accordance with the provisions of rule 441—75.59(249A), family size shall be determined as follows:

(1) If the person under the age of 21 is pregnant and the pregnancy has been verified in accordance with rule 441—75.17(249A), the unborn child (or children if more than one) is considered a member of the family for purposes of establishing the number of persons in the family.

(2) A "man-in-the-house" who is not married to the mother of the unborn child is not considered a member of the unborn child's family for the purpose of establishing the number of persons in the family. His income and resources are not automatically considered, regardless of whether or not he is the legal or natural father of the unborn child. However, income and resources made available to the mother of the unborn child by the "man-in-the-house" shall be considered in determining eligibility for the pregnant individual.

(3) Unless otherwise specified, when the person under the age of 21 is living with a parent(s), the family size shall consist of all family members as defined by the family medical assistance program in accordance with paragraph 75.57(8)*"c"* and subrule 75.58(1).

Application for Medicaid shall be made by the parent(s) when the person is residing with them. A person shall be considered to be living with the parent(s) when the person is temporarily absent from the parent's(s') home as defined in subrule 75.53(4). If the person under the age of 21 is married or has been married, the needs, income and resources of the person's parent(s) and any siblings in the home shall not be considered in the eligibility determination unless the marriage was annulled.

(4) When a person is living with a spouse the family size shall consist of that person, the spouse and any of their children, including any unborn children.

(5) Siblings under the age of 21 who live together shall be considered in the same filing unit for the purpose of establishing eligibility under this rule unless one sibling is married or has been married, in which case, the married sibling shall be considered separately unless the marriage was annulled.

(6) When a person is residing in a household in which some members are receiving FMAP under the provisions of subrule 75.1(14) or MAC under the provisions of subrule 75.1(28), and when the person is not included in the FMAP or MAC eligible group, the family size shall consist of the person and all other family members as defined above except those in the FMAP or MAC eligible group.

b. Rescinded IAB 9/6/89, effective 11/1/89.

c. Rescinded IAB 11/1/89, effective 1/1/90.

d. A person is eligible for the entire month in which the person's twenty-first birthday occurs unless the birthday falls on the first day of the month.

e. Living with a specified relative as provided in subrule 75.54(2) shall not be considered when determining eligibility for persons under this coverage group.

75.1(16) *Children receiving subsidized adoption payments from states providing reciprocal medical assistance benefits.* Medical assistance shall be available to children under the age of 21 for whom an adoption assistance agreement with another state is in effect if all of the following conditions are met:

a. The child is residing in Iowa in a private home with the child's adoptive parent or parents.

b. Benefits funded under Title IV-E of the Social Security Act are not being paid for the child by any state.

c. Another state currently has an adoption assistance agreement in effect for the child.

d. The state with the adoption assistance agreement:

(1) Is a member of the interstate compact on adoption and medical assistance (ICAMA); and

(2) Provides medical assistance benefits pursuant to a program funded under Title XIX of the Social Security Act, under the optional group at Section 1902(a)(10)(A)(ii)(VIII) of the Act, to children residing in that state (at least until age 18) for whom there is a state adoption assistance agreement in effect with the state of Iowa other than under Title IV-E of the Social Security Act.

75.1(17) *Persons who meet the income and resource requirements of the cash assistance programs.* Medicaid shall be available to the following persons who meet the income and resource guidelines of supplemental security income or refugee cash assistance, but who are not receiving cash assistance:

a. Aged and blind persons, as defined at subrule 75.13(2).

b. Disabled persons, as defined at rule 441—75.20(249A).

In establishing eligibility for children for this coverage group based on eligibility for SSI, resources of all persons in the eligible group, regardless of age, shall be disregarded. In establishing eligibility for adults for this coverage group, resources shall be considered as provided for SSI-related coverage groups under subrule 75.13(2) or as under refugee cash assistance.

75.1(18) *Persons eligible for waiver services.* Medicaid shall be available to recipients of waiver services as defined in 441—Chapter 83.

75.1(19) *Persons and families terminated from aid to dependent children (ADC) prior to April 1, 1990, due to discontinuance of the $30 or the $30 and one-third earned income disregards.* Rescinded IAB 6/12/91, effective 8/1/91.

75.1(20) *Newborn children.* Medicaid shall be available without an application to newborn children of women who are determined eligible for Medicaid for the month of the child's birth or for three-day emergency services for labor and delivery for the child's birth. Effective April 1, 2009, eligibility begins with the month of the birth and continues through the month of the first birthday as long as the child remains an Iowa resident.

a. The department shall accept any written or verbal statement as verification of the newborn's birth date unless the birth date is questionable.

b. In order for Medicaid to continue after the month of the first birthday, a redetermination of eligibility shall be completed.

75.1(21) *Persons and families ineligible for the family medical assistance program (FMAP) in whole or in part because of child or spousal support.* Medicaid shall be available for an additional four months to persons and families who become ineligible for FMAP because of income from child support, alimony, or contributions from a spouse if the person or family member received FMAP in at least three of the six months immediately preceding the month of cancellation.

a. The four months of extended Medicaid coverage begin the day following termination of FMAP eligibility.

b. When ineligibility is determined to occur retroactively, the extended Medicaid coverage begins with the first month in which FMAP eligibility was erroneously granted.

c. Rescinded IAB 10/11/95, effective 10/1/95.

75.1(22) *Refugee spenddown participants.* Rescinded IAB 10/11/95, effective 10/1/95.

75.1(23) *Persons who would be eligible for supplemental security income or state supplementary assistance but for increases in social security benefits because of elimination of the actuarial reduction formula and cost-of-living increases received.* Medical assistance shall be available to all current social security recipients who meet the following conditions. They:

a. Were eligible for a social security benefit in December of 1983.

b. Were eligible for and received a widow's or widower's disability benefit and supplemental security income or state supplementary assistance for January of 1984.

c. Became ineligible for supplemental security income or state supplementary assistance because of an increase in their widow's or widower's benefit which resulted from the elimination of the reduction factor in the first month in which the increase was paid and in which a retroactive payment of that increase for prior months was not made.

d. Have been continuously eligible for a widow's or widower's benefit from the first month the increase was received.

e. Would be eligible for supplemental security income or state supplementary assistance benefits if the amount of the increase from elimination of the reduction factor and any subsequent cost-of-living adjustments were disregarded.

f. Submit an application prior to July 1, 1988, on Form 470-0442, Application for Medical Assistance or State Supplementary Assistance.

75.1(24) *Postpartum eligibility for pregnant women.* Medicaid shall continue to be available, without an application, for 60 days beginning with the last day of pregnancy and throughout the remaining days of the month in which the 60-day period ends, to a woman who had applied for Medicaid prior to the end of her pregnancy and was subsequently determined eligible for Medicaid for the month in which the pregnancy ended.

a. Postpartum Medicaid shall only be available to a woman who is not eligible for another coverage group after the pregnancy ends.

b. The woman shall not be required to meet any income or resource criteria during the postpartum period.

c. When the sixtieth day is not on the last day of the month the woman shall be eligible for Medicaid for the entire month.

75.1(25) *Persons who would be eligible for supplemental security income or state supplementary assistance except that they receive child's social security benefits based on disability.* Medical assistance shall be available to persons who receive supplemental security income (SSI) or state supplementary assistance (SSA) after their eighteenth birthday because of a disability or blindness which began before age 22 and who would continue to receive SSI or SSA except that they become entitled to or receive an increase in social security benefits from a parent's account.

75.1(26) Rescinded IAB 10/8/97, effective 12/1/97.

75.1(27) *Widows and widowers who are no longer eligible for supplemental security income or state supplementary assistance because of the receipt of social security benefits.* Medicaid shall be available to widows and widowers who meet the following conditions:

a. They have applied for and received or were considered recipients of supplemental security income or state supplementary assistance.

b. They apply for and receive Title II widow's or widower's insurance benefits or any other Title II old age or survivor's benefits, if eligible for widow's or widower's benefits.

c. Rescinded IAB 5/1/91, effective 4/11/91.

d. They were not entitled to Part A Medicare hospital insurance benefits at the time of application and receipt of Title II old age or survivor's benefits. They are not currently entitled to Part A Medicare hospital insurance benefits.

e. They are no longer eligible for supplemental security income or state supplementary assistance solely because of the receipt of their social security benefits.

75.1(28) *Pregnant women, infants and children (Mothers and Children (MAC)).* Medicaid shall be available to all pregnant women, infants (under one year of age) and children who have not attained the age of 19 if the following criteria are met:

a. Income.

(1) Family income shall not exceed 300 percent of the federal poverty level for pregnant women and for infants (under one year of age). Family income shall not exceed 133 percent of the federal poverty level for children who have attained one year of age but who have not attained 19 years of age. Income to be considered in determining eligibility for pregnant women, infants, and children shall be determined according to family medical assistance program (FMAP) methodologies except that the three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply. "Family income" is the income remaining after disregards and deductions have been applied as provided in rule 441—75.57(249A).

(2) Moneys received as a lump sum, except as specified in subrules 75.56(4) and 75.56(7) and paragraphs 75.57(8)*"b"* and *"c,"* shall be treated in accordance with paragraphs 75.57(9)*"b"* and *"c."*

(3) Unless otherwise specified, when the person under the age of 19 is living with a parent or parents, the family size shall consist of all family members as defined by the family medical assistance program.

Application for Medicaid shall be made by the parents when the person is residing with them. A person shall be considered to be living with the parents when the person is temporarily absent from the parent's home as defined in subrule 75.53(4). If the person under the age of 19 is married or has been married, the needs, income and resources of the person's parents and any siblings in the home shall not be considered in the eligibility determination unless the marriage was annulled.

(4) When a person under the age of 19 is living with a spouse, the family size shall consist of that person, the spouse, and any of their children.

(5) Siblings under the age of 19 who live together shall be considered in the same filing unit for the purpose of establishing eligibility under this subrule unless one sibling is married or has been married, in which case the married sibling shall be considered separately unless the marriage was annulled.

b. For pregnant women, resources shall not exceed $10,000 per household. In establishing eligibility for infants and children for this coverage group, resources of all persons in the eligible group, regardless of age, shall be disregarded. In establishing eligibility for pregnant women for this coverage group, resources shall be considered in accordance with department of public health 641—subrule 75.4(2).

c. Rescinded IAB 9/6/89, effective 11/1/89.

d. Eligibility for pregnant women under this rule shall begin no earlier than the first day of the month in which conception occurred and in accordance with 441—76.5(249A).

e. The unborn child (children if more than one fetus exists) shall be considered when determining the number of persons in the household.

f. An infant shall be eligible through the month of the first birthday unless the birthday falls on the first day of the month. A child shall be eligible through the month of the nineteenth birthday unless the birthday falls on the first day of the month.

g. Rescinded IAB 11/1/89, effective 1/1/90.

h. When determining eligibility under this coverage group, living with a specified relative as specified at subrule 75.54(2) and the student provisions specified in subrule 75.54(1) do not apply.

i. A woman who had applied for Medicaid prior to the end of her pregnancy and was subsequently determined eligible for assistance under this coverage group for the month in which her pregnancy ended shall be entitled to receive Medicaid through the postpartum period in accordance with subrule 75.1(24).

j. If an infant loses eligibility under this coverage group at the time of the first birthday due to an inability to meet the income limit for children or if a child loses eligibility at the time of the nineteenth birthday, but the infant or child is receiving inpatient services in a medical institution, Medicaid shall continue under this coverage group for the duration of the time continuous inpatient services are provided.

75.1(29) *Persons who are entitled to hospital insurance benefits under Part A of Medicare (Qualified Medicare Beneficiary program).* Medicaid shall be available to persons who are entitled to hospital insurance under Part A of Medicare to cover the cost of the Medicare Part A and B premiums, coinsurance and deductibles, providing the following conditions are met:

a. The person's monthly income does not exceed 100 percent of the federal poverty level (as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

(1) The amount of income shall be determined as under the federal Supplemental Security Income (SSI) program.

(2) Income shall not include any amount of social security income attributable to the cost-of-living increase through the month following the month in which the annual revision of the official poverty line is published.

b. The person's resources do not exceed the maximum amount of resources that a person may have to obtain the full low-income subsidy for Medicare Part D drug benefits. The amount of resources shall be determined as under the SSI program unless the person lives and is expected to live at least 30 consecutive days in a medical institution and has a spouse at home. Then the resource determination shall be made according to subrules 75.5(3) and 75.5(4).

c. The effective date of eligibility is the first of the month after the month of decision.

75.1(30) *Presumptive eligibility for pregnant women.* A pregnant woman who is determined by a qualified provider to be presumptively eligible for Medicaid, based only on her statements regarding family income, shall be eligible for ambulatory prenatal care. Eligibility shall continue until the last day of the month following the month of the presumptive eligibility determination unless the pregnant woman is determined to be ineligible for Medicaid during this period based on a Medicaid application filed either before the presumptive eligibility determination or during this period. In this case, presumptive eligibility shall end on the date Medicaid ineligibility is determined. A pregnant woman who files a Medicaid application but withdraws that application before eligibility is determined has not been determined ineligible for Medicaid. The pregnant woman shall complete Form 470-2927 or 470-2927(S), Health Services Application, in order for the qualified provider to make the presumptive eligibility determination. The qualified provider shall complete Form 470-2629, Presumptive Medicaid Income Calculation, in order to establish that the pregnant woman's family income is within the prescribed limits of the Medicaid program.

If the pregnant woman files a Medicaid application in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination, Medicaid shall continue until a decision of ineligibility is made on the application. Payment of claims for ambulatory prenatal care services provided to a pregnant woman under this subrule is not dependent upon a finding of Medicaid eligibility for the pregnant woman.

a. A qualified provider is defined as a provider who is eligible for payment under the Medicaid program and who meets all of the following criteria:

(1) Provides one or more of the following services:

1. Outpatient hospital services.
2. Rural health clinic services (if contained in the state plan).
3. Clinic services furnished by or under the direction of a physician, without regard to whether the clinic itself is administered by a physician.

(2) Has been specifically designated by the department in writing as a qualified provider for the purposes of determining presumptive eligibility on the basis of the department's determination that the provider is capable of making a presumptive eligibility determination based on family income.

(3) Meets one of the following:

1. Receives funds under the Migrant Health Centers or Community Health Centers (subsection 329 or subsection 330 of the Public Health Service Act) or the Maternal and Child Health Services Block Grant Programs (Title V of the Social Security Act) or the Health Services for Urban Indians Program (Title V of the Indian Health Care Improvement Act).

2. Participates in the program established under the Special Supplemental Food Program for Women, Infants, and Children (subsection 17 of the Child Nutrition Act of 1966) or the Commodity Supplemental Food Program (subsection 4(a) of the Agriculture and Consumer Protection Act of 1973).

3. Participates in a state perinatal program.

4. Is an Indian health service office or a health program or facility operated by a tribe or tribal organization under the Indian Self-Determination Act.

b. The provider shall complete Form 470-2579, Application for Authorization to Make Presumptive Medicaid Eligibility Determinations, and submit it to the department for approval in order to become certified as a provider qualified to make presumptive eligibility determinations. Once the provider has been approved as a provider qualified to make presumptive Medicaid eligibility determinations, Form 470-2582, Memorandum of Understanding Between the Iowa Department of Human Services and a Qualified Provider, shall be signed by the provider and the department.

c. Once the qualified provider has made a presumptive eligibility determination for a pregnant woman, the provider shall:

(1) Contact the department to obtain a state identification number for the pregnant woman who has been determined presumptively eligible.

(2) Notify the department in writing of the determination within five working days after the date the presumptive determination is made. A copy of the Presumptive Medicaid Eligibility Notice of Decision, Form 470-2580 or 470-2580(S), shall be used for this purpose.

(3) Inform the pregnant woman in writing, at the time the determination is made, that if she chose not to apply for Medicaid on the Health Services Application, Form 470-2927 or 470-2927(S), she has until the last day of the month following the month of the preliminary determination to file an application with the department. A Presumptive Medicaid Eligibility Notice of Decision, Form 470-2580, shall be issued by the qualified provider for this purpose.

(4) Forward copies of the Health Services Application, Form 470-2927 or 470-2927(S), to the appropriate offices for eligibility determinations if the pregnant woman indicated on the application that she was applying for any of the other programs listed on the application. These copies shall be forwarded within two working days from the date of the presumptive determination.

d. In the event that a pregnant woman needing prenatal care does not appear to be presumptively eligible, the qualified provider shall inform the pregnant woman that she may file an application at the local department office if she wishes to have a formal determination made.

e. Presumptive eligibility shall end under any of the following conditions:

(1) The woman fails to file an application for Medicaid in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination.

(2) The woman files a Medicaid application by the last day of the month following the month of the presumptive eligibility determination and has been found ineligible for Medicaid.

(3) Rescinded IAB 5/1/91, effective 7/1/91.

f. The adequate and timely notice requirements and appeal rights associated with an application that is filed pursuant to rule 441—76.1(249A) shall apply to an eligibility determination made on the Medicaid application. However, notice requirements and appeal rights of the Medicaid program shall not apply to a woman who is:

(1) Issued a presumptive eligibility decision by a qualified provider.

(2) Determined to be presumptively eligible by a qualified provider and whose presumptive eligibility ends because the woman fails to file an application by the last day of the month following the month of the initial presumptive eligibility determination.

(3) Rescinded IAB 5/1/91, effective 7/1/91.

g. A woman shall not be determined to be presumptively eligible for Medicaid more than once per pregnancy.

75.1(31) *Persons and families canceled from the family medical assistance program (FMAP) due to the increased earnings of the specified relative in the eligible group.* Medicaid shall be available for a period of up to 12 additional months to families who are canceled from FMAP as provided in subrule 75.1(14) because the specified relative of a dependent child receives increased income from employment.

For the purposes of this subrule, "family" shall mean individuals living in the household whose needs and income were included in determining the FMAP eligibility of the household members at the time that the FMAP benefits were terminated. "Family" also includes those individuals whose needs and income would be taken into account in determining the FMAP eligibility of household members if the household were applying in the current month.

a. Increased income from employment includes:

(1) Beginning employment.

(2) Increased rate of pay.

(3) Increased hours of employment.

b. In order to receive transitional Medicaid coverage under these provisions, an FMAP family must have received FMAP during at least three of the six months immediately preceding the month in which ineligibility occurred.

c. The 12 months' Medicaid transitional coverage begins the day following termination of FMAP eligibility.

d. When ineligibility is determined to occur retroactively, the transitional Medicaid coverage begins with the first month in which FMAP eligibility was erroneously granted, unless the provisions of paragraph *"f"* below apply.

e. Rescinded IAB 8/12/98, effective 10/1/98.

f. Transitional Medicaid shall not be allowed under these provisions when it has been determined that the member received FMAP in any of the six months immediately preceding the month of cancellation as the result of fraud. Fraud shall be defined in accordance with Iowa Code Supplement section 239B.14.

g. During the transitional Medicaid period, assistance shall be terminated at the end of the first month in which the eligible group ceases to include a child, as defined by the family medical assistance program.

h. If the family receives transitional Medicaid coverage during the entire initial six-month period and the department has received, by the twenty-first day of the fourth month, a complete Notice of Decision/Quarterly Income Report, Form 470-2663 or 470-2663(S), Medicaid shall continue for an additional six months, subject to paragraphs *"g"* and *"i"* of this subrule.

(1) If the department does not receive a completed form by the twenty-first day of the fourth month, assistance shall be canceled.

(2) A completed form is one that has all items answered, is signed, is dated, and is accompanied by verification as required in paragraphs 75.57(1)*"f"* and 75.57(2)*"l."*

i. Medicaid shall end at the close of the first or fourth month of the additional six-month period if any of the following conditions exists:

(1) The department does not receive a complete Notice of Decision/Quarterly Income Report, Form 470-2663 or 470-2663(S), by the twenty-first day of the first month or the fourth month of the additional six-month period as required in paragraph 75.1(31)*"h,"* unless the family establishes good cause for failure to report on a timely basis. Good cause shall be established when the family demonstrates that one or more of the following conditions exist:

1. There was a serious illness or death of someone in the family.

2. There was a family emergency or household disaster, such as a fire, flood, or tornado.

3. The family offers a good cause beyond the family's control.

4. There was a failure to receive the department's notification for a reason not attributable to the family. Lack of a forwarding address is attributable to the family.

(2) The specified relative had no earnings in one or more of the previous three months, unless the lack of earnings was due to an involuntary loss of employment, illness, or there were instances when problems could negatively impact the client's achievement of self-sufficiency as described at 441—subrule 93.133(4).

(3) It is determined that the family's average gross earned income, minus child care expenses for the children in the eligible group necessary for the employment of the specified relative, during the immediately preceding three-month period exceeds 185 percent of the federal poverty level as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

j. These provisions apply to specified relatives defined at paragraph 75.55(1)*"a,"* including:

(1) Any parent who is in the home. This includes parents who are included in the eligible group as well as those who are not.

(2) A stepparent who is included in the eligible group and who has assumed the role of the caretaker relative due to the absence or incapacity of the parent.

(3) A needy specified relative who is included in the eligible group.

k. The timely notice requirements as provided in 441—subrule 76.4(1) shall not apply when it is determined that the family failed to meet the eligibility criteria specified in paragraph *"g"* or *"i"* above. Transitional Medicaid shall be terminated beginning with the first month following the month in which the family no longer met the eligibility criteria. An adequate notice shall be provided to the family when any adverse action is taken.

75.1(32) *Persons and families terminated from refugee cash assistance (RCA) because of income earned from employment.* Refugee medical assistance (RMA) shall be available as long as the eight-month limit for the refugee program is not exceeded to persons who are receiving RMA and who are canceled from the RCA program solely because a member of the eligible group receives income from employment.

a. An RCA recipient shall not be required to meet any minimum program participation time frames in order to receive RMA coverage under these provisions.

b. A person who returns to the home after the family became ineligible for RCA may be included in the eligible group for RMA coverage if the person was included on the assistance grant the month the family became ineligible for RCA.

75.1(33) *Qualified disabled and working persons.* Medicaid shall be available to cover the cost of the premium for Part A of Medicare (hospital insurance benefits) for qualified disabled and working persons.

a. Qualified disabled and working persons are persons who meet the following requirements:

(1) The person's monthly income does not exceed 200 percent of the federal poverty level applicable to the family size involved.

(2) The person's resources do not exceed twice the maximum amount allowed under the supplemental security income (SSI) program.

(3) The person is not eligible for any other Medicaid benefits.

(4) The person is entitled to enroll in Medicare Part A of Title XVIII under Section 1818A of the Social Security Act (as added by Section 6012 of OBRA 1989).

b. The amount of the person's income and resources shall be determined as under the SSI program.

75.1(34) *Specified low-income Medicare beneficiaries.* Medicaid shall be available to persons who are entitled to hospital insurance under Part A of Medicare to cover the cost of the Medicare Part B premium, provided the following conditions are met:

a. The person's monthly income exceeds 100 percent of the federal poverty level but is less than 120 percent of the federal poverty level (as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

b. The person's resources do not exceed the maximum amount of resources that a person may have to obtain the full low-income subsidy for Medicare Part D drug benefits.

c. The amount of income and resources shall be determined as under the SSI program unless the person lives and is expected to live at least 30 consecutive days in a medical institution and has a spouse at home. Then the resource determination shall be made according to subrules 75.5(3) and 75.5(4). Income shall not include any amount of social security income attributable to the cost-of-living increase through the month following the month in which the annual revision of the official poverty level is published.

d. The effective date of eligibility shall be as set forth in rule 441—76.5(249A).

75.1(35) *Medically needy persons.*

a. *Coverage groups.* Subject to other requirements of this chapter, Medicaid shall be available to the following persons:

(1) Pregnant women. Pregnant women who would be eligible for FMAP-related coverage groups except for excess income or resources. For FMAP-related programs, pregnant women shall have the unborn child or children counted in the household size as if the child or children were born and living with them.

(2) FMAP-related persons under the age of 19. Persons under the age of 19 who would be eligible for an FMAP-related coverage group except for excess income.

(3) CMAP-related persons under the age of 21. Persons under the age of 21 who would be eligible in accordance with subrule 75.1(15) except for excess income.

(4) SSI-related persons. Persons who would be eligible for SSI except for excess income or resources.

(5) FMAP-specified relatives. Persons whose income or resources exceed the family medical assistance program's limit and who are a specified relative as defined at subrule 75.55(1) living with a child who is determined dependent.

b. *Resources and income of all persons considered.*

(1) Resources of all specified relatives and of all potentially eligible individuals living together, except as specified at subparagraph 75.1(35)*"b"*(2) or who are excluded in accordance with the provisions of rule 441—75.59(249A), shall be considered in determining eligibility of adults. Resources of all specified relatives and of all potentially eligible individuals living together shall be disregarded in determining eligibility of children. Income of all specified relatives and of all potentially eligible individuals living together, except as specified at subparagraph 75.1(35)*"b"*(2) or who are excluded in accordance with the provisions of rule 441—75.59(249A), shall be considered in determining eligibility.

(2) The amount of income of the responsible relative that has been counted as available to an FMAP household or SSI individual shall not be considered in determining the countable income for the medically needy eligible group.

(3) The resource determination shall be according to subrules 75.5(3) and 75.5(4) when one spouse is expected to reside at least 30 consecutive days in a medical institution.

c. *Resources.*

(1) The resource limit for adults in SSI-related households shall be $10,000 per household.

(2) Disposal of resources for less than fair market value by SSI-related applicants or members shall be treated according to policies specified in rule 441—75.23(249A).

(3) The resource limit for FMAP- or CMAP-related adults shall be $10,000 per household. In establishing eligibility for children for this coverage group, resources of all persons in the eligible group, regardless of age, shall be disregarded. In establishing eligibility for adults for this coverage group, resources shall be considered according to department of public health 641—subrule 75.4(2).

(4) The resources of SSI-related persons shall be treated according to SSI policies.

(5) When a resource is jointly owned by SSI-related persons and FMAP-related persons, the resource shall be treated according to SSI policies for the SSI-related person and according to FMAP policies for the FMAP-related persons.

d. *Income.* All unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted shall be considered in determining initial and continuing eligibility.

(1) Income policies specified in subrules 75.57(1) through 75.57(8) and paragraphs 75.57(9)*"b," "c," "g," "h,"* and *"i"* regarding treatment of earned and unearned income are applied to FMAP-related and CMAP-related persons when determining initial eligibility and for determining continuing eligibility unless otherwise specified. The three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply to medically needy persons.

(2) Income policies as specified in federal SSI regulations regarding treatment of earned and unearned income are applied to SSI-related persons when determining initial and continuing eligibility.

(3) The monthly income shall be determined prospectively unless actual income is available.

(4) The income for the certification period shall be determined by adding both months' net income together to arrive at a total.

(5) The income for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

e. Medically needy income level (MNIL).

(1) The MNIL is based on 133 1/3 percent of the schedule of basic needs, as provided in subrule 75.58(2), with households of one treated as households of two, as follows:

Number of Persons	1	2	3	4	5	6	7	8	9	10
MNIL	$483	$483	$566	$666	$733	$816	$891	$975	$1058	$1158

Each additional person $116

(2) When determining household size for the MNIL, all potential eligibles and all individuals whose income is considered as specified in paragraph 75.1(35)*"b"* shall be included unless the person has been excluded according to the provisions of rule 441—75.59(249A).

(3) The MNIL for the certification period shall be determined by adding both months' MNIL to arrive at a total.

The MNIL for the retroactive certification period shall be determined by adding each month of the retroactive period to arrive at a total.

(4) The total net countable income for the certification period shall be compared to the total MNIL for the certification period based on family size as specified in subparagraph (2).

If the total countable net income is equal to or less than the total MNIL, the medically needy individuals shall be eligible for Medicaid.

If the total countable net income exceeds the total MNIL, the medically needy individuals shall not be eligible for Medicaid unless incurred medical expenses equal or exceed the difference between the net income and the MNIL.

(5) Effective date of approval. Eligibility during the certification period or the retroactive certification period shall be effective as of the first day of the first month of the certification period or the retroactive certification period when the medically needy income level (MNIL) is met.

f. Verification of medical expenses to be used in spenddown calculation. The applicant or member shall submit evidence of medical expenses that are for noncovered Medicaid services and for covered services incurred prior to the certification period to the department on a claim form, which shall be completed by the medical provider. In cases where the provider is uncooperative or where returning to the provider would constitute an unreasonable requirement on the applicant or member, the form shall be completed by the worker. Verification of medical expenses for the applicant or member that are covered Medicaid services and occurred during the certification period shall be submitted by the provider to the Iowa Medicaid enterprise on a claim form. The applicant or member shall inform the provider of the applicant's or member's spenddown obligation at the time services are rendered or at the time the applicant or member receives notification of a spenddown obligation. Verification of allowable expenses incurred for transportation to receive medical care as specified in rule 441—78.13(249A) shall be verified on Form 470-0394, Medical Transportation Claim.

Applicants who have not established that they met spenddown in the current certification period shall be allowed 12 months following the end of the certification period to submit medical expenses for that

period or 12 months following the date of the notice of decision when the certification period had ended prior to the notice of decision.

g. Spenddown calculation.

(1) Medical expenses that are incurred during the certification period may be used to meet spenddown. Medical expenses incurred prior to a certification period shall be used to meet spenddown if not already used to meet spenddown in a previous certification period and if all of the following requirements are met. The expenses:

1. Remain unpaid as of the first day of the certification period.

2. Are not Medicaid-payable in a previous certification period or the retroactive certification period.

3. Are not incurred during any prior certification period with the exception of the retroactive period in which the person was conditionally eligible but did not meet spenddown.

Notwithstanding numbered paragraphs "1" through "3" above, paid medical expenses from the retroactive period can be used to meet spenddown in the retroactive period or in the certification period for the two months immediately following the retroactive period.

(2) Order of deduction. Spenddown shall be adjusted when a bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a bill for a covered service incurred prior to the certification period is subsequently received. Spenddown shall also be adjusted when a bill for a noncovered Medicaid service is subsequently received with a service date prior to the Medicaid-covered service. Spenddown shall be adjusted when an unpaid bill for a Medicaid-covered service incurred during the certification period has been applied to meet spenddown if a paid bill for a covered service incurred in the certification period is subsequently received with a service date prior to the date of the notice of spenddown status.

If spenddown has been met and a bill is received with a service date after spenddown has been met, the bill shall not be deducted to meet spenddown.

Incurred medical expenses, including those reimbursed by a state or political subdivision program other than Medicaid, but excluding those otherwise subject to payment by a third party, shall be deducted in the following order:

1. Medicare and other health insurance premiums, deductibles, or coinsurance charges.

EXCEPTION: When some of the household members are eligible for full Medicaid benefits under the Health Insurance Premium Payment Program (HIPP), as provided in rule 441—75.21(249A), the health insurance premium shall not be allowed as a deduction to meet the spenddown obligation of those persons in the household in the medically needy coverage group.

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Compilation of Various Costs and Statistical Data (Category: All; Type of Care: Residential Care Facility; Location: All; Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Compilation of Various Costs and Statistical Data for the previous fiscal year.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, chronologically by date of submission.

4. Medical expenses for acupuncture, chronologically by date of submission.

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, chronologically by date of submission.

(3) When incurred medical expenses have reduced income to the applicable MNIL, the individuals shall be eligible for Medicaid.

(4) Medical expenses reimbursed by a public program other than Medicaid prior to the certification period shall not be considered a medical deduction.

h. *Medicaid services.* Persons eligible for Medicaid as medically needy will be eligible for all services covered by Medicaid except:

(1) Care in a nursing facility or an intermediate care facility for the mentally retarded.

(2) Care in an institution for mental disease.

(3) Care in a Medicare-certified skilled nursing facility.

i. *Reviews.* Reviews of eligibility shall be made for SSI-related, CMAP-related, and FMAP-related medically needy members with a zero spenddown as often as circumstances indicate but in no instance shall the period of time between reviews exceed 12 months.

SSI-related, CMAP-related, and FMAP-related medically needy persons shall complete Form 470-3118 or 470-3118(S), Medicaid Review, as part of the review process when requested to do so by the department.

j. *Redetermination.* When an SSI-related, CMAP-related, or FMAP-related member who has had ongoing eligibility because of a zero spenddown has income that exceeds the MNIL, a redetermination of eligibility shall be completed to change the member's eligibility to a two-month certification with spenddown. This redetermination shall be effective the month the income exceeds the MNIL or the first month following timely notice.

(1) The Health Services Application, Form 470-2927 or 470-2927(S), or the Health and Financial Support Application, Form 470-0462 or Form 470-0466(Spanish), shall be used to determine eligibility for SSI-related medically needy when an SSI recipient has been determined to be ineligible for SSI due to excess income or resources in one or more of the months after the effective date of the SSI eligibility decision.

(2) All eligibility factors shall be reviewed on redeterminations of eligibility.

k. *Recertifications.* A new application shall be made when the certification period has expired and there has been a break in assistance as defined at rule 441—75.25(249A). When the certification period has expired and there has not been a break in assistance, the person shall use the Medicaid Review, Form 470-3118 or 470-3118(S), to be recertified.

l. *Disability determinations.* An applicant receiving social security disability benefits under Title II of the Social Security Act or railroad retirement benefits based on the Social Security Act definition of disability by the Railroad Retirement Board shall be deemed disabled without any further determination. In other cases under the medically needy program, the department shall conduct an independent determination of disability unless the applicant has been denied supplemental security income benefits based on lack of disability and does not allege either (1) a disabling condition different from or in addition to that considered by the Social Security Administration, or (2) that the applicant's condition has changed or deteriorated since the most recent Social Security Administration determination.

(1) In conducting an independent determination of disability, the department shall use the same criteria required by federal law to be used by the Social Security Administration of the United States Department of Health and Human Services in determining disability for purposes of Supplemental Security Income under Title XVI of the Social Security Act. The disability determination services bureau of the division of vocational rehabilitation shall make the initial disability determination on behalf of the department.

(2) For an independent determination of disability, the applicant or the applicant's authorized representative shall complete, sign and submit Form 470-4459 or 470-4459(S), Authorization to Disclose Information to the Department of Human Services, and either:

1. Form 470-2465, Disability Report for Adults, if the applicant is aged 18 or over; or

2. Form 470-3912, Disability Report for Children, if the applicant is under the age of 18.

(3) In connection with any independent determination of disability, the department shall determine whether reexamination of the person's medical condition will be necessary for periodic redeterminations of eligibility. When reexamination is required, the member or the member's authorized representative shall complete and submit the same forms as required in subparagraph (2).

75.1(36) *Expanded specified low-income Medicare beneficiaries.* As long as 100 percent federal funding is available under the federal Qualified Individuals (QI) Program, Medicaid benefits to cover the cost of the Medicare Part B premium shall be available to persons who are entitled to Medicare Part A provided the following conditions are met:

a. The person is not otherwise eligible for Medicaid.

b. The person's monthly income is at least 120 percent of the federal poverty level but is less than 135 percent of the federal poverty level (as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

c. The person's resources do not exceed the maximum amount of resources that a person may have to obtain the full low-income subsidy for Medicare Part D drug benefits.

d. The amount of the income and resources shall be determined the same as under the SSI program unless the person lives and is expected to live at least 30 consecutive days in a medical institution and has a spouse at home. Then the resource determination shall be made according to subrules 75.5(3) and 75.5(4). Income shall not include any amount of social security income attributable to the cost-of-living increase through the month following the month in which the annual revision of the official poverty level is published.

e. The effective date of eligibility shall be as set forth in rule 441—76.5(249A).

75.1(37) *Home health specified low-income Medicare beneficiaries.* Rescinded IAB 10/30/02, effective 1/1/03.

75.1(38) *Continued Medicaid for disabled children from August 22, 1996.* Medical assistance shall be available to persons who were receiving SSI as of August 22, 1996, and who would continue to be eligible for SSI but for Section 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

75.1(39) *Working persons with disabilities.*

a. Medical assistance shall be available to all persons who meet all of the following conditions:

(1) They are disabled as determined pursuant to rule 441—75.20(249A), except that being engaged in substantial gainful activity will not preclude a determination of disability.

(2) They are less than 65 years of age.

(3) They are members of families (including families of one) whose income is less than 250 percent of the most recently revised official federal poverty level for the family. Family income shall include gross income of all family members, less supplemental security income program disregards, exemptions, and exclusions, including the earned income disregards.

(4) They receive earned income from employment or self-employment or are eligible under paragraph *"c."*

(5) They would be eligible for medical assistance under another coverage group set out in this rule (other than the medically needy coverage groups at subrule 75.1(35)), disregarding all income, up to $10,000 of available resources, and any additional resources held by the disabled individual in a retirement account, a medical savings account, or an assistive technology account. For this purpose, disability shall be determined as under subparagraph (1) above.

(6) They have paid any premium assessed under paragraph *"b"* below.

b. Eligibility for a person whose gross income is greater than 150 percent of the federal poverty level for an individual is conditional upon payment of a premium. Gross income includes all earned and unearned income of the conditionally eligible person. A monthly premium shall be assessed at the time of application and at the annual review. The premium amounts and the federal poverty level increments above 150 percent of the federal poverty level used to assess premiums will be adjusted annually on August 1.

(1) Beginning with the month of application, the monthly premium amount shall be established for a 12-month period based on projected average monthly income for the 12-month period. The monthly premium established shall not be increased for any reason during the 12-month period. The premium shall not be reduced due to a change in the federal poverty level but may be reduced or eliminated prospectively during the 12-month period if a reduction in projected average monthly income is verified.

(2) Eligible persons are required to complete and return Form 470-3118 or 470-3118(S), Medicaid Review, with income information during the twelfth month of the annual enrollment period to determine the premium to be assessed for the next 12-month enrollment period.

(3) Premiums shall be assessed as follows:

IF THE INCOME OF THE APPLICANT IS ABOVE:	THE MONTHLY PREMIUM IS:
150% of Federal Poverty Level	$33
180% of Federal Poverty Level	$53
220% of Federal Poverty Level	$73
250% of Federal Poverty Level	$94
280% of Federal Poverty Level	$109
310% of Federal Poverty Level	$129
340% of Federal Poverty Level	$154
370% of Federal Poverty Level	$188
400% of Federal Poverty Level	$221
430% of Federal Poverty Level	$255
460% of Federal Poverty Level	$295
510% of Federal Poverty Level	$342
590% of Federal Poverty Level	$396
680% of Federal Poverty Level	$457
775% of Federal Poverty Level	$524
900% of Federal Poverty Level	$608

(4) Eligibility is contingent upon the payment of any assessed premiums. Medical assistance eligibility shall not be made effective for a month until the premium assessed for the month is paid. The premium must be paid within three months of the month of coverage or of the month of initial billing, whichever is later, for the person to be eligible for the month.

(5) When the department notifies the applicant of the amount of the premiums, the applicant shall pay any premiums due as follows:

1. The premium for each month is due the fourteenth day of the month the premium is to cover. EXCEPTIONS: The premium for the month of initial billing is due the fourteenth day of the following month; premiums for any months prior to the month of initial billing are due on the fourteenth day of the third month following the month of billing.

2. If the fourteenth day falls on a weekend or a state holiday, payment is due the first working day following the holiday or weekend.

3. When any premium payment due in the month it is to cover is not received by the due date, Medicaid eligibility shall be canceled.

(6) Payments received shall be applied in the following order:

1. To the month in which the payment is received if the premium for the current calendar month is unpaid.

2. To the following month when the payment is received after a billing statement has been issued for the following month.

3. To prior months when a full payment has not been received. Payments shall be applied beginning with the most recent unpaid month before the current calendar month, then the oldest unpaid prior month and forward until all prior months have been paid.

4. When premiums for all months above have been paid, any excess shall be held and applied to any months for which eligibility is subsequently established, as specified in numbered paragraphs “1,” “2,” and “3” above, and then to future months when a premium becomes due.

5. Any excess on an inactive account shall be refunded to the client after two calendar months of inactivity or of a zero premium or upon request from the client.

(7) An individual's case may be reopened when Medicaid eligibility is canceled for nonpayment of premium. However, the premium must be paid in full within the calendar month following the month the payment was due for reopening.

(8) Premiums may be submitted in the form of cash, money orders, or personal checks to the department at the following address: Department of Human Services, Supply Unit A-Level, Room 77, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319.

(9) Once an individual is canceled from Medicaid due to nonpayment of premiums, the individual must reapply to establish Medicaid eligibility unless the reopening provisions of this subrule apply.

(10) When a premium due in the month it is to cover is not received by the due date, a notice of decision will be issued to cancel Medicaid. The notice will include reopening provisions that apply if payment is received and appeal rights.

(11) Form 470-3694, Billing Statement, shall be used for billing and collection.

c. Persons receiving assistance under this coverage group who become unable to work due to a change in their medical condition or who lose employment shall remain eligible for a period of six months from the month of the change in their medical condition or loss of employment as long as they intend to return to work and continue to meet all other eligibility criteria under this subrule.

d. For purposes of this subrule, the following definitions apply:

"Assistive technology" is the systematic application of technologies, engineering, methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas that include education, rehabilitation, technology devices and assistive technology services.

"Assistive technology accounts" include funds in contracts, savings, trust or other financial accounts, financial instruments or other arrangements with a definite cash value set aside and designated for the purchase, lease or acquisition of assistive technology, assistive technology devices or assistive technology services. Assistive technology accounts must be held separate from other accounts and funds and must be used to purchase, lease or otherwise acquire assistive technology, assistive technology services or assistive technology devices for the working person with a disability when a physician, certified vocational rehabilitation counselor, licensed physical therapist, licensed speech therapist, or licensed occupational therapist has established the medical necessity of the device, technology, or service and determined the technology, device, or service can reasonably be expected to enhance the individual's employment.

"Assistive technology device" is any item, piece of equipment, product system or component part, whether acquired commercially, modified or customized, that is used to increase, maintain, or improve functional capabilities or address or eliminate architectural, communication, or other barriers confronted by persons with disabilities.

"Assistive technology service" means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device or other assistive technology. It includes, but is not limited to, services referred to or described in the Assistive Technology Act of 1998, 29 U.S.C. 3002(4).

"Family," if the individual is under 18 and unmarried, includes parents living with the individual, siblings under 18 and unmarried living with the individual, and children of the individual who live with the individual. If the individual is 18 years of age or older, or married, "family" includes the individual's spouse living with the individual and any children living with the individual who are under 18 and unmarried. No other persons shall be considered members of an individual's family. An individual living alone or with others not listed above shall be considered to be a family of one.

"Medical savings account" means an account exempt from federal income taxation pursuant to Section 220 of the United States Internal Revenue Code (26 U.S.C. § 220).

"Retirement account" means any retirement or pension fund or account, listed in Iowa Code section 627.6(8)*"f"* as exempt from execution, regardless of the amount of contribution, the interest generated, or the total amount in the fund or account.

75.1(40) *People who have been screened and found to need treatment for breast or cervical cancer.*

a. Medical assistance shall be available to people who:

(1) Have been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and have been found to need treatment for either breast or cervical cancer (including a precancerous condition);

(2) Do not otherwise have creditable coverage, as that term is defined by the Health Insurance Portability and Accountability Act (HIPAA) (42 U.S.C. Section 300gg(c)(1)), and are not eligible for medical assistance under Iowa Code section 249A.3(1); and

(3) Are under the age of 65.

b. Eligibility established under paragraph *"a"* continues until the person is:

(1) No longer receiving treatment for breast or cervical cancer;

(2) No longer under the age of 65; or

(3) Covered by creditable coverage or eligible for medical assistance under Iowa Code section 249A.3(1).

c. Presumptive eligibility. A person who has been screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act, who has been found to need treatment for either breast or cervical cancer (including a precancerous condition), and who is determined by a qualified provider to be presumptively eligible for medical assistance under paragraph *"a"* shall be eligible for medical assistance until the last day of the month following the month of the presumptive eligibility determination if no Medicaid application is filed in accordance with rule 441—76.1(249A) by that day or until the date of a decision on a Medicaid application filed in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination, whichever is earlier.

The person shall complete Form 470-2927 or 470-2927(S), Health Services Application, in order for the qualified provider to make the presumptive eligibility determination. Presumptive eligibility shall begin no earlier than the date the qualified Medicaid provider determines eligibility.

Payment of claims for services provided to a person under this paragraph is not dependent upon a finding of Medicaid eligibility for the person.

(1) A provider who is qualified to determine presumptive eligibility is defined as a provider who:

1. Is eligible for payment under the Medicaid program; and

2. Either:

- Has been named lead agency for a county or regional local breast and cervical cancer early detection program under a contract with the department of public health; or
- Has a cooperative agreement with the department of public health under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act to receive reimbursement for providing breast or cervical cancer screening or diagnostic services to participants in the Care for Yourself Breast and Cervical Cancer Early Detection Program; and

3. Has made application and has been specifically designated by the department in writing as a qualified provider for the purpose of determining presumptive eligibility under this rule.

(2) The provider shall complete Form 470-3864, Application for Authorization to Make Presumptive Medicaid Eligibility Determinations (BCCT), and submit it to the department for approval in order to be designated as a provider qualified to make presumptive eligibility determinations. Once the department has approved the provider's application, the provider and the department shall sign Form 470-3865, Memorandum of Understanding with a Qualified Provider for People with Breast or Cervical Cancer Treatment. When both parties have signed the memorandum, the department shall designate the provider as a qualified provider and notify the provider.

(3) When a qualified provider has made a presumptive eligibility determination for a person, the provider shall:

1. Contact the department to obtain a state identification number for the person who has been determined presumptively eligible.

2. Notify the department in writing of the determination within five working days after the date the presumptive eligibility determination is made. The provider shall use a copy of Form 470-2580 or 470-2580(S), Presumptive Medicaid Eligibility Notice of Decision, for this purpose.

3. Inform the person in writing, at the time the determination is made, that if the person has not applied for Medicaid on Form 470-2927 or 470-2927(S), Health Services Application, the person has until the last day of the month following the month of the preliminary determination to file the application with the department. The qualified provider shall use Form 470-2580 or 470-2580(S), Presumptive Medicaid Eligibility Notice of Decision, for this purpose.

4. Forward copies of Form 470-2927 or 470-2927(S), Health Services Application, to the appropriate department office for eligibility determination if the person indicated on the application that the person was applying for any of the other programs. The provider shall forward these copies and proof of screening for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program within two working days from the date of the presumptive eligibility determination.

(4) In the event that a person needing care does not appear to be presumptively eligible, the qualified provider shall inform the person that the person may file an application at the county department office if the person wishes to have an eligibility determination made by the department.

(5) Presumptive eligibility shall end under either of the following conditions:

1. The person fails to file an application for Medicaid in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination.

2. The person files a Medicaid application by the last day of the month following the month of the presumptive eligibility determination and is found ineligible for Medicaid.

(6) Adequate and timely notice requirements and appeal rights shall apply to an eligibility determination made on a Medicaid application filed pursuant to rule 441—76.1(249A). However, notice requirements and appeal rights of the Medicaid program shall not apply to a person who is:

1. Denied presumptive eligibility by a qualified provider.

2. Determined to be presumptively eligible by a qualified provider and whose presumptive eligibility ends because the person fails to file an application by the last day of the month following the month of the presumptive eligibility determination.

(7) A new period of presumptive eligibility shall begin each time a person is screened for breast or cervical cancer under the Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act, is found to need treatment for breast or cervical cancer, and files Form 470-2927 or 470-2927(S), Health Services Application, with a qualified provider.

75.1(41) *Women eligible for family planning services under demonstration waiver.* Medical assistance for family planning services only shall be available to women as provided in this subrule.

a. Eligibility. The following are eligible for assistance under this coverage group:

(1) Women who were Medicaid members when their pregnancy ended and who are capable of bearing children but are not pregnant. Eligibility for these women extends for 12 consecutive months after the month when their 60-day postpartum period ends.

(2) Women who are of childbearing age, are capable of bearing children but are not pregnant, and have income that does not exceed 200 percent of the federal poverty level, as determined according to paragraph 75.1(41)*"c."*

b. Application.

(1) Women eligible under subparagraph 75.1(41)*"a"*(1) are not required to file an application for assistance under this coverage group. The department will automatically redetermine eligibility pursuant to rule 441—76.11(249A) upon loss of other Medicaid eligibility within 12 months after the month when the 60-day postpartum period ends.

(2) Women requesting assistance based on subparagraph 75.1(41)*"a"*(2) shall file an application as required in rule 441—76.1(249A).

c. Determining income eligibility. The department shall determine the countable income of a woman applying under subparagraph 75.1(41)*"a"*(2) as follows:

(1) Household size. The household size shall include the applicant or member, any dependent children as defined in 441—subrule 75.54(1) living in the same home as the applicant or member, and any spouse living in the same home as the applicant or member, except when a dependent child or spouse has elected to receive supplemental security income under Title XVI of the Social Security Act.

(2) Earned income. All earned income as defined in 441—subrule 75.57(2) that is received by a member of the household shall be counted except for the earnings of a child who is a full-time student as defined in 441—paragraph 75.54(1)*"b."*

(3) Unearned income. The following unearned income of all household members shall be counted:

1. Unemployment compensation.
2. Child support.
3. Alimony.
4. Social security and railroad retirement benefits.
5. Worker's compensation and disability payments.
6. Benefits paid by the Department of Veterans Affairs to disabled members of the armed forces or survivors of deceased veterans.

(4) Deductions. Deductions from income shall be made for any payments made by household members for court-ordered child support, alimony, or spousal support to non-household members and as provided in 441—subrule 75.57(2).

(5) Disregard of changes. A woman found to be income-eligible upon application or annual redetermination of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

d. Effective date. Assistance for family planning services under this coverage group shall be effective on the first day of the month of application or the first day of the month all eligibility requirements are met, whichever is later. Notwithstanding 441—subrule 76.5(1), assistance shall not be available under this coverage group for any months preceding the month of application.

75.1(42) *Medicaid for independent young adults.* Medical assistance shall be available, as assistance related to the family medical assistance program, to a person who left a foster care placement on or after May 1, 2006, and meets all of the following conditions:

a. The person is at least 18 years of age and under 21 years of age.

b. On the person's eighteenth birthday, the person resided in foster care and Iowa was responsible for the foster care payment pursuant to Iowa Code section 234.35.

c. The person is not a mandatory household member or receiving Medicaid benefits under another coverage group.

d. The person has income below 200 percent of the most recently revised federal poverty level for the person's household size.

(1) "Household" shall mean the person and any of the following people who are living with the person and are not active on another Medicaid case:

1. The person's own children;
2. The person's spouse; and
3. Any children of the person's spouse who are under the age of 18 and unmarried.

No one else shall be considered a member of the person's household. A person who lives alone or with others not listed above, including the person's parents, shall be considered a household of one.

(2) The department shall determine the household's countable income pursuant to rule 75.57(249A). Twenty percent of earned income shall be disregarded.

(3) A person found to be income-eligible upon application or upon annual redetermination of eligibility shall remain income-eligible for 12 months regardless of any change in income or household size.

75.1(43) *Medicaid for children with disabilities.* Medical assistance shall be available to children who meet all of the following conditions on or after January 1, 2009:

a. The child is under 19 years of age.

b. The child is disabled as determined pursuant to rule 441—75.20(249A) based on the disability standards for children used for Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act, but without regard to any income or asset eligibility requirements of the SSI program.

c. The child is enrolled in any group health plan available through the employer of a parent living in the same household as the child if the employer contributes at least 50 percent of the total cost of annual premiums for that coverage. The parent shall enroll the child and pay any employee premium required to maintain coverage for the child.

d. The child's household has income at or below 300 percent of the federal poverty level applicable to a family of that size.

(1) For this purpose, the child's household shall include any of the following persons who are living with the child and are not receiving Medicaid on another case:

1. The child's parents.
2. The child's siblings under the age of 19.
3. The child's spouse.
4. The child's children.
5. The children of the child's spouse.

(2) Only those persons identified in subparagraph (1) shall be considered a member of the child's household. A person who receives medically needy coverage with a spenddown or limited benefits such as Medicare savings programs or family planning services only is not considered to be "receiving Medicaid" for the purposes of subparagraph (1). A child who lives alone or with persons not identified in subparagraph (1) shall be considered as having a household of one.

(3) For this purpose, the income of all persons included in the child's household shall be determined as provided for SSI-related groups under subrule 75.13(2).

(4) The federal poverty levels used to determine eligibility shall be revised annually on April 1.

75.1(44) *Presumptive eligibility for children.* Medical assistance shall be available to children under the age of 19 who are determined by a qualified entity to be presumptively eligible for medical assistance pursuant to this subrule.

a. *Qualified entity.* A "qualified entity" is an entity described in paragraphs (1) through (10) of the definition of the term at 42 CFR 435.1101, as amended to October 1, 2008, that:

(1) Has been determined by the department to be capable of making presumptive determinations of eligibility, and

(2) Has signed an agreement with the department as a qualified entity.

b. *Application process.* Families requesting assistance for children under this subrule shall apply with a qualified entity using the form specified in 441—paragraph 76.1(1)*"f."* The qualified entity shall use the department's Web-based system to make the presumptive eligibility determination, based on the information provided in the application.

(1) All presumptive eligibility applications shall be forwarded to the department for a full Medicaid or HAWK-I eligibility determination, regardless of the child's presumptive eligibility status.

(2) The date a valid application was received by the qualified entity establishes the date of application for purposes of determining the effective date of Medicaid or HAWK-I eligibility unless the qualified entity received the application on a weekend or state holiday. Applications received by the qualified entity on a weekend or a state holiday shall be considered to be received on the first business day following the weekend or state holiday.

(3) The qualified entity shall issue Form 470-2580 or 470-2580(S), Presumptive Medicaid Eligibility Notice of Decision, to inform the applicant of the decision on the application as soon as possible but no later than within two working days after the date the determination is made.

(4) Timely and adequate notice requirements and appeal rights of the Medicaid program shall not apply to presumptive eligibility decisions made by a qualified entity.

c. *Eligibility requirements.* To be determined presumptively eligible for medical assistance, a child shall meet the following eligibility requirements.

(1) Age. The child must be under the age of 19.

(2) Household income. Household income must be less than 300 percent of the federal poverty level for a household of the same size. For this purpose, the household shall include the applicant child and any sibling (of whole or half blood, or adoptive), spouse, parent, or stepparent living with the applicant child. This determination shall be based on the household's gross income, with no deductions, diversions, or disregards.

(3) Citizenship or qualified alien status. The child must be a citizen of the United States or a qualified alien as defined in subrule 75.11(2).

(4) Iowa residency. The child must be a resident of Iowa.

(5) Prior presumptive eligibility. A child shall not be determined presumptively eligible more than once in a 12-month period. The first month of the 12-month period begins with the month the application is received by the qualified entity.

d. Period of presumptive eligibility. Presumptive eligibility shall begin with the date that presumptive eligibility is determined and shall continue until the earliest of the following dates:

(1) The last day of the next calendar month;

(2) The day the child is determined eligible for Medicaid;

(3) The last day of the month that the child is determined eligible for HAWK-I; or

(4) The day the child is determined ineligible for Medicaid and HAWK-I. Withdrawal of the Medicaid or HAWK-I application before eligibility is determined shall not affect the child's eligibility during the presumptive period.

e. Services covered. Children determined presumptively eligible under this subrule shall be entitled to all Medicaid-covered services, including early and periodic screening, diagnosis, and treatment (EPSDT) services. Payment of claims for Medicaid services provided to a child during the presumptive eligibility period, including EPSDT services, is not dependent upon a determination of Medicaid or HAWK-I eligibility by the department.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4 and 249A.6.

[**ARC 7741B**, IAB 5/6/09, effective 7/1/09; **ARC 7833B**, IAB 6/3/09, effective 8/1/09; **ARC 7929B**, IAB 7/1/09, effective 7/1/09; **ARC 7931B**, IAB 7/1/09, effective 7/1/09; **ARC 8095B**, IAB 9/9/09, effective 10/14/09; **ARC 8260B**, IAB 11/4/09, effective 1/1/10; **ARC 8261B**, IAB 11/4/09, effective 10/15/09; **ARC 8439B**, IAB 1/13/10, effective 3/1/10; **ARC 8503B**, IAB 2/10/10, effective 1/13/10; **ARC 8713B**, IAB 5/5/10, effective 8/1/10]

441—75.2(249A) Medical resources. Medical resources include health and accident insurance, eligibility for care through the Department of Veterans Affairs, specialized child health services, Title XVIII of the Social Security Act (Medicare), and other resources for meeting the cost of medical care which may be available to the member. These resources must be used when reasonably available.

75.2(1) The department shall approve payment only for those services or that part of the cost of a given service for which no medical resources exist unless pay and chase provisions as defined in rule 441—75.25(249A) are applicable.

a. Persons who have been approved by the Social Security Administration for Supplemental Security Income shall complete Form 470-0364, 470-0364(M), 470-0364(MS), or 470-0364(S), SSI Medicaid Information, and return it to the department.

b. Persons eligible for Part B of the Medicare program shall make assignment to the department on Form 470-0364, 470-0364(M), 470-0364(MS), or 470-0364(S), SSI Medicaid Information.

75.2(2) As a condition of eligibility for medical assistance, a person who has the legal capacity to execute an assignment shall do all of the following:

a. Assign to the department any rights to payments of medical care from any third party to the extent that payment has been made under the medical assistance program. The applicant's signature on any form listed in 441—subrule 76.1(1) shall constitute agreement to the assignment. The assignment shall be effective for the entire period for which medical assistance is paid.

b. Cooperate with the department in obtaining third-party payments. The member or one acting on the member's behalf shall:

(1) File a claim or submit an application for any reasonably available medical resource, and

(2) Cooperate in the processing of the claim or application.

c. Cooperate with the department in identifying and providing information to assist the department in pursuing any third party who may be liable to pay for medical care and services available under the medical assistance program.

75.2(3) Good cause for failure to cooperate in the filing or processing of a claim or application shall be considered to exist when the member, or one acting on behalf of a minor, or of a legally incompetent adult member, is physically or mentally incapable of cooperation. Good cause shall be considered to exist when cooperation is reasonably anticipated to result in:

a. Physical or emotional harm to the member for whom medical resources are being sought.

b. Physical or emotional harm to the parent or payee, acting on the behalf of a minor, or of a legally incompetent adult member, for whom medical resources are being sought.

75.2(4) Failure to cooperate as required in subrule 75.2(2) without good cause as defined in subrule 75.2(3) shall result in the termination of medical assistance benefits. The department shall make the determination of good cause based on information and evidence provided by the member or by one acting on the member's behalf.

a. The medical assistance benefits of a minor or a legally incompetent adult member shall not be terminated for failure to cooperate in reporting medical resources.

b. When a parent or payee acting on behalf of a minor or legally incompetent adult member fails to file a claim or application for reasonably available medical resources or fails to cooperate in the processing of a claim or application without good cause, the medical assistance benefits of the parent or payee shall be terminated.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5 and 249A.6.

[**ARC 7546B**, IAB 2/11/09, effective 4/1/09; **ARC 8503B**, IAB 2/10/10, effective 1/13/10; **ARC 8785B**, IAB 6/2/10, effective 8/1/10]

441—75.3(249A) Acceptance of other financial benefits. An applicant or member shall take all steps necessary to apply for and, if entitled, accept any income or resources for which the applicant or member may qualify, unless the applicant or member can show an incapacity to do so. Sources of benefits may be, but are not limited to, annuities, pensions, retirement or disability benefits, veterans' compensation and pensions, old-age, survivors, and disability insurance, railroad retirement benefits, black lung benefits, or unemployment compensation.

75.3(1) When it is determined that the supplemental security income (SSI)-related applicant or member may be entitled to other cash benefits, the department shall send a Notice Regarding Acceptance of Other Benefits, Form 470-0383, to the applicant or member.

75.3(2) The SSI-related applicant or member must express an intent to apply or refuse to apply for other benefits within ten calendar days from the date the notice is issued. A signed refusal to apply or failure to return the form shall result in denial of the application or cancellation of Medicaid unless the applicant or member is mentally or physically incapable of filing the claim for other cash benefits.

75.3(3) When the SSI-related applicant or member is physically or mentally incapable of filing the claim for other cash benefits, the department shall request the person acting on behalf of the member to pursue the potential benefits.

75.3(4) The SSI-related applicant or member shall cooperate in applying for the other benefits. Failure to timely secure the other benefits shall result in cancellation of Medicaid.

EXCEPTION: An applicant or member shall not be required to apply for supplementary security income to receive Medicaid under subrule 75.1(17).

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

441—75.4(249A) Medical assistance lien.

75.4(1) When payment is made by the department for medical care or expenses through the medical assistance program on behalf of a member, the department shall have a lien, to the extent of those payments, to all monetary claims which the member may have against third parties.

a. A lien is not effective unless the department files a notice of lien with the clerk of the district court in the county where the member resides and with the member's attorney when the member's

eligibility for medical assistance is established. The notice of lien shall be filed before the third party has concluded a final settlement with the member, the member's attorney, or other representative.

b. The third party shall obtain a written determination from the department concerning the amount of the lien before a settlement is deemed final.

(1) A compromise, including, but not limited to, notification, settlement, waiver or release of a claim, does not defeat the department's lien except pursuant to the written agreement of the director or the director's designee under which the department would receive less than full reimbursement of the amounts it expended.

(2) A settlement, award, or judgment structured in any manner not to include medical expenses or an action brought by a member or on behalf of a member which fails to state a claim for recovery of medical expenses does not defeat the department's lien if there is any recovery on the member's claim.

c. All notifications to the department required by law shall be directed to the Iowa Medicaid Enterprise, Revenue Collection Unit, P.O. Box 36475, Des Moines, Iowa 50315. Notification shall be considered made as of the time the notification is deposited so addressed, postage prepaid, in the United States Postal Service system.

75.4(2) The department may pursue its rights to recover either directly from any third party or from any recovery obtained by or on behalf of any member. If a member incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the department has a lien under this section, upon the receipt of the judgment or settlement of the total claim, of which the lien for medical assistance payments is a part, the court costs and reasonable attorney fees shall first be deducted from this total judgment or settlement. One-third of the remaining balance shall then be deducted and paid to the member. From the remaining balance, the lien of the department shall be paid. Any amount remaining shall be paid to the member. An attorney acting on behalf of a member for the purpose of enforcing a claim to which the department has a lien shall not collect from the member any amount as attorney fees which is in excess of the amount which the attorney customarily would collect on claims not subject to this rule. The department will provide computer-generated documents or claim forms describing the services for which it has paid upon request of any affected member or the member's attorney. The documents may also be provided to a third party where necessary to establish the extent of the department's claim.

75.4(3) In those cases where appropriate notification is not given to the department or where the department's recovery rights are otherwise adversely affected by an action of the member or one acting on the member's behalf, medical assistance benefits shall be terminated. The medical assistance benefits of a minor child or a legally incompetent adult member shall not be terminated. Subsequent eligibility for medical assistance benefits shall be denied until an amount equal to the unrecovered claim has been reimbursed to the department or the individual produces documentation of incurred medical expense equal to the amount of the unrecovered claim. The incurred medical expense shall not be paid by the medical assistance program.

a. The client, or one acting on the client's behalf, shall provide information and verification as required to establish the availability of medical or third-party resources.

b. Rescinded IAB 9/4/91, effective 11/1/91.

c. The client or person acting on the client's behalf shall complete Form 470-2826, Supplemental Insurance Questionnaire, in a timely manner at the time of application, when any change in medical resources occurs during the application period, and when any changes in medical resources occur after the application is approved.

A report shall be considered timely when made within ten days from:

(1) The date that health insurance begins, changes, or ends.

(2) The date that eligibility begins for care through the Department of Veterans Affairs, specialized child health services, Title XVIII of the Social Security Act (Medicare) and other resources.

(3) The date the client, or one acting on the client's behalf, files an insurance claim against an insured third party, for the payment of medical expenses that otherwise would be paid by Medicaid.

(4) The date the member, or one acting on the member's behalf, retains an attorney with the expectation of seeking restitution for injuries from a possibly liable third party, and the medical expenses resulting from those injuries would otherwise be paid by Medicaid.

(5) The date that the member, or one acting on the member's behalf, receives a partial or total settlement for the payment of medical expenses that would otherwise be paid by Medicaid.

The member may report the change in person, by telephone, by mail or by using the Ten-Day Report of Change, Form 470-0499 or 470-0499(S), which is mailed with the Family Investment Program warrants and is issued to the client when Medicaid applications are approved, when annual reviews are completed, when a completed Ten-Day Report of Change is submitted, and when the client requests a form.

d. The member, or one acting on the member's behalf, shall complete the Priority Leads Letter, Form 470-0398, when the department has reason to believe that the member has sustained an accident-related injury. Failure to cooperate in completing and returning this form, or in giving complete and accurate information, shall result in the termination of Medicaid benefits.

e. When the recovery rights of the department are adversely affected by the actions of a parent or payee acting on behalf of a minor or legally incompetent adult member, the Medicaid benefits of the parent or payee shall be terminated. When a parent or payee fails to cooperate in completing or returning the Priority Leads Letter, Form 470-0398, or the Supplemental Insurance Questionnaire, Form 470-2826, or fails to give complete and accurate information concerning the accident-related injuries of a minor or legally incompetent adult member, the department shall terminate the Medicaid benefits of the parent or payee.

f. The member, or one acting on the member's behalf, shall refund to the department from any settlement or payment received the amount of any medical expenses paid by Medicaid. Failure of the member to do so shall result in the termination of Medicaid benefits. In those instances where a parent or payee, acting on behalf of a minor or legally incompetent adult member, fails to refund a settlement overpayment to the department, the Medicaid benefits of the parent or payee shall be terminated.

75.4(4) Third party and provider responsibilities.

a. The health care services provider shall inform the department by appropriate notation on the Health Insurance Claim, Form CMS-1500, that other coverage exists but did not cover the service being billed or that payment was denied.

b. The health care services provider shall notify the department in writing by mailing copies of any billing information sent to a member, an attorney, an insurer or other third party after a claim has been submitted to or paid by the department.

c. An attorney representing an applicant for medical assistance or a past or present Medicaid member on a claim to which the department has filed a lien under this rule shall notify the department of the claim of which the attorney has actual knowledge, before filing a claim, commencing an action or negotiating a settlement offer. Actual knowledge shall include the notice to the attorney pursuant to subrule 75.4(1). The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the department at its state or local office location, is adequate legal notice of the claim.

75.4(5) Department's lien.

a. The department's liens are valid and binding on an attorney, insurer or other third party only upon notice by the department or unless the attorney, insurer or other third party has actual notice that the member is receiving medical assistance from the department and only to the extent that the attorney, insurer or third party has not made payment to the member or an assignee of the member prior to the notice.

Any information released to an attorney, insurer or other third party, by the health care services provider, that indicates that reimbursement from the state was contemplated or received, shall be construed as giving the attorney, insurer or other third party actual knowledge of the department's involvement. For example, information supplied by a health care services provider which indicates medical assistance involvement shall be construed as showing involvement by the department under Iowa Code section 249A.6. Payment of benefits by an insurer or third party pursuant to the rights of the

lienholder in this rule discharges the attorney, insurer or other third party from liability to the member or the member's assignee to the extent of the payment to the department.

b. When the department has reason to believe that an attorney is representing a member on a claim to which the department filed a lien under this rule, the department shall issue notice to that attorney of the department's lien rights by mailing the Notice of Medical Assistance Lien, Form 470-3030, to the attorney.

c. When the department has reason to believe that an insurer is liable for the costs of a member's medical expenses, the department shall issue notice to the insurer of the department's lien rights by mailing the Notice of Medical Assistance Lien, Form 470-3030, to the insurer.

d. The mailing and deposit in a United States post office or public mailing box of the notice, addressed to the attorney or insurer, is adequate legal notice of the department's subrogation rights.

75.4(6) For purposes of this rule, the term "third party" includes an attorney, individual, institution, corporation, or public or private agency which is or may be liable to pay part or all of the medical costs incurred as a result of injury, disease or disability by or on behalf of an applicant for medical assistance or a past or present Medicaid member.

75.4(7) The department may enforce its lien by a civil action against any liable third party.

This rule is intended to implement Iowa Code sections 249A.4, 249A.5, and 249A.6.

441—75.5(249A) Determination of countable income and resources for persons in a medical institution. In determining eligibility for any coverage group under rule 441—75.1(249A), certain factors must be considered differently for persons who reside in a medical institution. They are:

75.5(1) Determining income from property.

a. *Nontrust property.* Where there is nontrust property, unless the document providing income specifies differently, income paid in the name of one person shall be available only to that person. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, including a Medicaid client, a client's spouse, or both, the income shall be considered in proportion to the Medicaid client's or spouse's interest. If payment is made jointly to both spouses and no interest is specified, one-half of the couple's joint interest shall be considered available for each spouse. If the client or the client's spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.

b. *Trust property.* Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.

75.5(2) Division of income between married people for SSI-related coverage groups.

a. *Institutionalized spouse and community spouse.* If there is a community spouse, only the institutionalized person's income shall be considered in determining eligibility for the institutionalized spouse.

b. *Spouses institutionalized and living together.* Partners in a marriage who are residing in the same room in a medical institution shall be treated as a couple until the first day of the seventh calendar month that they continuously reside in the facility. The couple may continue to be considered as a couple for medical assistance effective the first day of the seventh calendar month of continuous residency if one partner would be ineligible for medical assistance or receive reduced benefits by considering them separate individuals or if they choose to be considered together. When spouses are treated as a couple, the combined income of the couple shall not exceed twice the amount of the income limit established in subrule 75.1(7). Persons treated together as a couple for income must be treated together for resources and persons treated individually for income must be treated individually for resources.

Spouses residing in the same room in a medical institution may be treated as individuals effective the first day of the seventh calendar month. The income of each spouse shall not exceed the income limit established in subrule 75.1(7).

c. *Spouses institutionalized and living apart.* Partners in a marriage who are both institutionalized, although not residing in the same room of the institution, shall be treated as individuals effective the month after the month the partners cease living together. Their income shall be treated separately

for eligibility. If they live in the same facility after six months of continuous residence, they may be considered as a couple for medical assistance effective the first day of the seventh calendar month of continuous residency if one partner would be ineligible for medical assistance or receive reduced benefits by considering them separate individuals or if they choose to be considered together.

In the month of entry into a medical institution, income shall not exceed the amount of the income limit established in subrule 75.1(7).

75.5(3) Attribution of resources to institutionalized spouse and community spouse. The department shall determine the attribution of a couple's resources to the institutionalized spouse and to the community spouse when the institutionalized spouse is expected to remain in a medical institution at least 30 consecutive days on or after September 30, 1989, at the beginning of the first continuous period of institutionalization.

a. When determined. The department shall determine the attribution of resources between spouses at the earlier of the following:

(1) When either spouse requests that the department determine the attribution of resources at the beginning of the person's continuous stay in a medical facility prior to an application for Medicaid benefits. This request must be accompanied by Form 470-2577, Resources Upon Entering a Medical Facility, and necessary documentation.

(2) When the institutionalized spouse or someone acting on that person's behalf applies for Medicaid benefits. If the application is not made in the month of entry, the applicant shall also complete Form 470-2577 and provide necessary documentation.

b. Information required. The couple must provide the social security number of the community spouse. The attribution process shall include a match of the Internal Revenue Service data for both the institutionalized and community spouses.

c. Resources considered. The resources attributed shall include resources owned by both the community spouse and institutionalized spouse except for the following resources:

(1) The home in which the spouse or relatives as defined in 441—paragraph 41.22(3)*"a"* live (including the land that appertains to the home).

(2) Household goods, personal effects, and one automobile.

(3) The value of any burial spaces held for the purpose of providing a place for the burial of either spouse or any other member of the immediate family.

(4) Other property essential to the means of self-support of either spouse as to warrant its exclusion under the SSI program.

(5) Resources of a blind or disabled person who has a plan for achieving self-support as determined by division of vocational rehabilitation or the department of human services.

(6) For natives of Alaska, shares of stock held in a regional or a village corporation, during the period of 20 years in which the stock is inalienable, as provided in Section 7(h) and Section 8(c) of the Alaska Native Claims Settlement Act.

(7) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute on account of a presidentially declared major disaster and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.

(8) Any amount of underpayment of SSI or social security benefit due either spouse for one or more months prior to the month of receipt. This exclusion shall be limited to the first six months following receipt.

(9) A life insurance policy(ies) whose total face value is $1500 or less per spouse.

(10) An amount, not in excess of $1500 for each spouse that is separately identifiable and has been set aside to meet the burial and related expenses of that spouse. The amount of $1500 shall be reduced by an amount equal to the total face value of all insurance policies which are owned by the person or spouse and the total of any amounts in an irrevocable trust or other irrevocable arrangement available to meet the burial and related expenses of that spouse.

(11) Federal assistance paid for housing occupied by the spouse.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a client comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized spouse and the community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than $24,000, then $24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds the maximum amount allowed as a community spouse resource allowance by Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. § 1396r-5(f)(2)(A)(i)), the amount over the maximum shall be attributed to the institutionalized spouse. (The maximum limit is indexed annually according to the consumer price index.)

If the institutionalized spouse has transferred resources to the community spouse under a court order for the support of the community spouse, the amount transferred shall be the amount attributed to the community spouse if it exceeds the specified limits above.

e. Notice and appeal rights. The department shall provide each spouse a notice of the attribution results. The notice shall state that either spouse has a right to appeal the attribution if the spouse believes:

(1) That the attribution is incorrect, or

(2) That the amount of income generated by the resources attributed to the community spouse is inadequate to raise the community spouse's income to the minimum monthly maintenance allowance.

If an attribution has not previously been appealed, either spouse may appeal the attribution upon the denial of an application for Medicaid benefits based on the attribution.

f. Appeals. Hearings on attribution decisions shall be governed by procedures in 441—Chapter 7. If the hearing establishes that the community spouse's resource allowance is inadequate to raise the community spouse's income to the minimum monthly maintenance allowance, there shall be substituted an amount adequate to provide the minimum monthly maintenance needs allowance.

(1) To establish that the resource allowance is inadequate and receive a substituted allowance, the applicant must provide verification of all the income of the community spouse. For an applicant who became an institutionalized spouse on or after February 8, 2006, all income of the institutionalized spouse that could be made available to the community spouse pursuant to 75.16(2)*"d"* shall be treated as countable income of the community spouse when the attribution decision was made on or after February 8, 2006.

(2) The amount of resources adequate to provide the community spouse minimum maintenance needs allowance shall be based on the cost of a single premium lifetime annuity with monthly payments equal to the difference between the monthly maintenance needs allowance and other countable income not generated by either spouse's countable resources.

(3) The resources necessary to provide the minimum maintenance needs allowance shall be based on the maintenance needs allowance as provided by these rules at the time of the filing of the appeal.

(4) To receive the substituted allowance, the applicant shall be required to obtain one estimate of the cost of the annuity.

(5) The estimated cost of an annuity shall be substituted for the amount of resources attributed to the community spouse when the amount of resources previously determined is less than the estimated cost of an annuity. If the amount of resources previously attributed for the community spouse is greater than the estimated cost of an annuity, there shall be no substitution for the cost of the annuity, and the attribution will remain as previously determined.

(6) The applicant shall not be required to purchase this annuity as a condition of Medicaid eligibility.

(7) If the appellant provides a statement from an insurance company that it will not provide an estimate due to the potential annuitant's age, the amount to be set aside shall be determined using the

following calculation: The difference between the community spouse's gross monthly income not generated by countable resources (times 12) and the minimum monthly maintenance needs allowance (times 12) shall be multiplied by the annuity factor for the age of the community spouse in the Table for an Annuity for Life published at the end of Iowa Code chapter 450. This amount shall be substituted for the amount of resources attributed to the community spouse pursuant to subparagraph 75.5(3)*"f"*(5).

75.5(4) Consideration of resources of married people.

a. One spouse in a medical facility who entered the facility on or after September 30, 1989.

(1) Initial month. When the institutionalized spouse is expected to stay in a medical facility less than 30 consecutive days, the resources of both spouses shall be considered in determining initial Medicaid eligibility.

When the institutionalized spouse is expected to be in a medical facility 30 consecutive days or more, only the resources not attributed to the community spouse according to subrule 75.5(3) shall be considered in determining initial eligibility for the institutionalized spouse.

The amount of resources counted for eligibility for the institutionalized spouse shall be the difference between the couple's total resources at the time of application and the amount attributed to the community spouse under this rule.

(2) Ongoing eligibility. After the month in which the institutionalized spouse is determined eligible, no resources of the community spouse shall be deemed available to the institutionalized spouse during the continuous period in which the spouse is in an institution. Resources which are owned wholly or in part by the institutionalized spouse and which are not transferred to the community spouse shall be counted in determining ongoing eligibility. The resources of the institutionalized spouse shall not count for ongoing eligibility to the extent that the institutionalized spouse intends to transfer and does transfer the resources to the community spouse within 90 days unless unable to effect the transfer.

(3) Exception based on estrangement. When it is established by a disinterested third-party source that the institutionalized spouse is estranged from the community spouse, Medicaid eligibility will not be denied on the basis of resources when the applicant can demonstrate hardship.

The applicant can demonstrate hardship when the applicant is unable to obtain information about the community spouse's resources after exploring all legal means.

The applicant can also demonstrate hardship when resources attributed from the community spouse cause the applicant to be ineligible, but the applicant is unable to access these resources after exhausting legal means.

(4) Exception based on assignment of support rights. The institutionalized spouse shall not be ineligible by attribution of resources that are not actually available when:

1. The institutionalized spouse has assigned to the state any rights to support from the community spouse, or

2. The institutionalized spouse lacks the ability to execute an assignment due to physical or mental impairment, but the state has the right to bring a support proceeding against a community spouse without an assignment.

b. One spouse in a medical institution prior to September 30, 1989. When one spouse is in the medical institution prior to September 30, 1989, only the resources of the institutionalized spouse shall count for eligibility according to SSI policies the month after the month of entry. In the month of entry, the resources of both spouses are countable toward the couple resource limit.

c. Spouses institutionalized and living together. The combined resources of both partners in a marriage who are residing in the same room in a medical institution shall be subject to the resource limit for a married couple until the first of the seventh calendar month that they continuously reside in the facility. The couple may continue to be considered as a couple for medical assistance effective with the seventh month if one partner would be ineligible for medical assistance or would receive reduced benefits by considering them separately or if they choose to be considered together. Persons treated together as a couple for resources must be treated together for income and persons treated individually for resources must be treated individually for income. Effective the first of the seventh calendar month of continuous residence, they may be treated as individuals, with the resource limit for each spouse the limit for a single person.

d. Spouses institutionalized and living apart. Partners in a marriage who are both institutionalized, although not residing in the same room of the institution, shall be treated as individuals effective the month after the month the partners cease living together. If they live in the same facility after six months of continuous residence, they may be considered as a couple for medical assistance effective the first day of the seventh calendar month of continuous residency if one partner would be ineligible for medical assistance or would receive reduced benefits by considering them separately or if they choose to be considered together.

In the month of entry into a medical institution, all resources of both spouses shall be combined and shall be subject to the resource limit for a married couple.

75.5(5) Consideration of resources for persons in a medical institution who have purchased and used a qualified or approved long-term care insurance policy pursuant to department of commerce, division of insurance, rules in 191—Chapter 39 or 72.

a. *Eligibility.* A person may be eligible for medical assistance under this subrule if:

(1) The person is the beneficiary of a qualified long-term care insurance policy or is enrolled in a prepaid health care delivery plan that provides long-term care services pursuant to 191—Chapter 39 or 72; and

(2) The person is eligible for medical assistance under 75.1(6), 75.1(7), or 75.1(18) except for excess resources; and

(3) The excess resources causing ineligibility under the listed coverage groups do not exceed the "asset adjustment" provided in this subrule.

b. *Definition.* "Asset adjustment" shall mean a $1 disregard of resources for each $1 that has been paid out under the person's qualified or approved long-term care insurance policy.

c. *Estate recovery.* An amount equal to the benefits paid out under a member's qualified or approved long-term care insurance policy will be exempt from recovery from the estate of the member or the member's spouse for payments made by the medical assistance program on behalf of the member.

This rule is intended to implement Iowa Code sections 249A.3, 249A.4, and 249A.35and chapter 514H.

[**ARC 8443B**, IAB 1/13/10, effective 3/1/10]

441—75.6(249A) Entrance fee for continuing care retirement community or life care community. When an individual resides in a continuing care retirement community or life care community that collects an entrance fee on admission, the entrance fee paid shall be considered a resource available to the individual for purposes of determining the individual's Medicaid eligibility and the amount of benefits to the extent that:

1. The individual has the ability to use the entrance fee, or the contract between the individual and the community provides that the entrance fee may be used to pay for care should the individual's other resources or income be insufficient to pay for such care;

2. The individual is eligible for a refund of any remaining entrance fee when the individual dies or when the individual terminates the community contract and leaves the community; and

3. The entrance fee does not confer an ownership interest in the community.

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

441—75.7(249A) Furnishing of social security number. As a condition of eligibility, a person for whom Medicaid is being requested or received must furnish a social security account number or must furnish proof of application for the number if the social security number has not been issued or is not known and provide the number upon receipt. This requirement does not apply if the person refuses to obtain a social security number because of well-established religious objections. The term "well-established religious objections" means that the person is a member of a recognized religious sect or a division of a recognized religious sect and adheres to the tenets or teachings of the sect or division, and for that reason is conscientiously opposed to applying for or using a national identification number.

75.7(1) Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

75.7(2) The mother of a newborn child shall have until the second month following the mother's discharge from the hospital to apply for a social security account number for the child.

75.7(3) Social security account numbers may be requested for people in the eligible group for whom Medicaid is not being requested or received, but provision of the number shall not be a condition of eligibility for the people in the eligible group for whom Medicaid is being requested or received.

This rule is intended to implement Iowa Code section 249A.3.

441—75.8(249A) Medical assistance corrective payments. If a decision by the department or the Social Security Administration following an appeal on a denied application for any of the categories of medical assistance eligibility set forth in rule 441—75.1(249A) is favorable to the claimant, reimbursement will be made to the claimant for any medical bills paid by the claimant during the period between the date of the denial on the initial application and the date regular medical assistance coverage began when the bills were for medical services rendered in the period now determined to be an eligible period based on the following conditions:

75.8(1) These bills must be for services covered by the medical assistance program as set forth in 441—Chapter 78.

75.8(2) Reimbursement will be based on Medicaid rates for services in effect at the time the services were provided.

75.8(3) If a county relief agency has paid medical bills on the recipient's behalf and has not received reimbursement through assignment as set forth in 441—Chapter 80, the department will reimburse the county relief agency directly on the same basis as if the reimbursement was made to the recipient.

75.8(4) Recipients and county relief agencies shall file claims for payment under this subrule by submitting Form 470-2224, Verification of Paid Medical Bills, to the department. A supply of these forms is available from the county office. All requests for reimbursement shall be acted upon within 60 days of receipt of all Forms 470-2224 in the county office.

75.8(5) Any adverse action taken by the department with respect to an application for reimbursement is appealable under 441—Chapter 7.

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

441—75.9(249A) Treatment of Medicaid qualifying trusts.

75.9(1) A Medicaid qualifying trust is a trust or similar legal device established, on or before August 10, 1993, other than by will by a person or that person's spouse under which the person may be the beneficiary of payments from the trust and the distribution of these payments is determined by one or more trustees who are permitted to exercise any discretion with respect to the distribution to the person. Trusts or initial trust decrees established prior to April 7, 1986, solely for the benefit of a mentally retarded person who resides in an intermediate care facility for the mentally retarded, are exempt.

75.9(2) The amount of income and principal from a Medicaid qualifying trust that shall be considered available shall be the maximum amount that may be permitted under the terms of the trust assuming the full exercise of discretion by the trustee or trustees for the distribution of the funds.

a. Trust income considered available shall be counted as income.

b. Trust principal (including accumulated income) considered available shall be counted as a resource, except where the trust explicitly limits the amount of principal that can be made available on an annual or less frequent basis. Where the trust limits the amount, the principal considered available over any particular period of time shall be counted as income for that period of time.

c. To the extent that the trust principal and income is available only for medical care, this principal or income shall not be used to determine eligibility. To the extent that the trust is restricted to medical expenses, it shall be used as a third party resource.

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

441—75.10(249A) Residency requirements. Residency in Iowa is a condition of eligibility for medical assistance.

75.10(1) *Definitions.*

"Incapable of expressing intent" shall mean that the person meets one or more of the following conditions:

1. Has an IQ of 49 or less or has a mental age of seven or less.
2. Is judged legally incompetent.
3. Is found incapable of indicating intent based on medical documentation obtained from a physician, psychologist or other person licensed by the state in the field of mental retardation.

"Institution" shall mean an establishment that furnishes (in single or multiple facilities) food, shelter, and some treatment or services to four or more persons unrelated to the proprietor. Foster care facilities are included.

75.10(2) *Determining residency.* Residency is determined according to the following criteria:

a. Persons aged 21 and over.

(1) For any person not residing in an institution the state of residence is the state where the person is:

1. Living with the intention to remain there permanently or for an indefinite period (or, if incapable of expressing intent, where the person is living), or
2. Living and which the person entered with a job commitment or seeking employment (whether or not currently employed).

(2) For any institutionalized person who became incapable of indicating intent before age 21, the person's state of residence is:

1. That of the parent applying for Medicaid on the person's behalf, if the parents reside in separate states. If a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's.
2. The parent's or legal guardian's state of residence at the time of placement. If a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's.
3. The current state of residence of the parent or legal guardian who files the application if the person is institutionalized in the state. If a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's.
4. The state of residence of the person who has been abandoned by the person's parents and does not have a legal guardian is the state in which the person is institutionalized.

(3) For any institutionalized person who became incapable of expressing intent at or after age 21, the state of residence is the state in which the person is physically present, except where another state makes a placement.

(4) For any other institutionalized person the state of residence is the state where the person is living with the intention to remain there permanently or for an indefinite period.

b. Persons under age 21.

(1) For any person who is emancipated from the person's parents or who is married and capable of expressing intent, the state of residence is the state where the person is living with the intention to remain there permanently or for an indefinite period.

(2) For any person not residing in an institution or foster home whose Medicaid eligibility is based on blindness or disability, the state of residence is the state in which the person is living.

(3) For any other person not in an institution or foster home and not subject to subparagraph (1) or (2) above, the state of residence is determined in accordance with rule 441—75.53(249A).

(4) For any person in an institution or foster home who is neither married nor emancipated, the state of residence is:

1. The parent's or legal guardian's state of residence at the time of placement. If a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's.

2. The current state of residence of the parent or legal guardian who files the application if the person is in institutionalized or in foster care in that state. If a legal guardian has been appointed and parental rights are terminated, the state of residence of the guardian is used instead of the parent's.

3. The state of residence of the person who has been abandoned by the person's parents and does not have a legal guardian is the state in which the person is institutionalized or in foster care.

c. Persons placed by a state in an out-of-state foster home or institution. A state arranging or actually making the placement of a person in an institution or foster home in another state is considered the person's state of residence. However, a Title IV-E eligible child placed out of state by the department is eligible for Medicaid from the other state. Therefore, the Title IV-E eligible child shall only receive Iowa Medicaid until the receiving state provides coverage. A Title IV-E eligible child placed in Iowa by another state shall be considered eligible for Iowa Medicaid.

d. Medicaid-eligible persons receiving Medicaid from another state and gaining Iowa residency. These persons shall be granted Medicaid beginning with the month of residency in Iowa if the person is otherwise eligible and surrenders the other state's medical card. Good cause for not surrendering the other state's medical card shall exist when:

(1) The other state does not issue medical cards.

(2) The other state's medical card is a magnetic stripe or a computer chip card that contains more than Medicaid-related information.

(3) The other state's medical card: was left with Medicaid-eligible members of the person's household in the other state who did not move to Iowa with the person; was lost, mutilated, or destroyed; was not kept by the person upon the person's move to Iowa; or was previously surrendered to the other state.

In addition to surrendering the other state's medical card or establishing good cause, the cancellation of Medicaid in the other state shall be verified.

This rule is intended to implement Iowa Code section 249A.3.

441—75.11(249A) Citizenship or alienage requirements.

75.11(1) *Definitions.*

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

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

1. Placing the patient's health in serious jeopardy.
2. Serious impairment to bodily functions.
3. Serious dysfunction of any bodily organ or part.

"Federal means-tested program" means all federal programs that are means-tested with the exception of:

1. Medical assistance for care and services necessary for the treatment of an emergency medical condition not related to an organ transplant procedure furnished on or after August 10, 1993.
2. Short-term, non-cash, in-kind emergency disaster relief.
3. Assistance or benefits under the National School Lunch Act.
4. Assistance or benefits under the Child Nutrition Act of 1966.
5. Public health assistance (not including any assistance under Title XIX of the Social Security Act) for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a communicable disease.
6. Payments of foster care and adoption assistance under Parts B and E of Title IV of the Social Security Act for a parent or a child who would, in the absence of numbered paragraph "1," be eligible to

have payments made on the child's behalf under such part, but only if the foster or adoptive parent (or parents) of the child is a qualified alien (as defined in Section 431).

7. Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the attorney general of the United States in the attorney general's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, that:

- Deliver in-kind services at the community level, including through public or private nonprofit agencies;
- Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and
- Are necessary for the protection of life or safety.

8. Programs of student assistance under Titles IV, V, IX, and X of the Higher Education Act of 1965, and Titles III, VII, and VIII of the Public Health Services Act.

9. Means-tested programs under the Elementary and Secondary Education Act of 1965.

10. Benefits under the Head Start Act.

11. Benefits funded through an employment and training program of the U.S. Department of Labor.

"Qualified alien" means an alien who is:

1. Lawfully admitted for permanent residence under the Immigration and Nationality Act;
2. Granted asylum under Section 208 of the Immigration and Nationality Act;
3. A refugee and who is admitted to the United States under Section 207 of the Immigration and Nationality Act;
4. Paroled into the United States under Section 212(d)(5) of the Immigration and Nationality Act for a period of at least one year;
5. An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act; or
6. Granted conditional entry pursuant to Section 203(a)(7) of the Immigration and Nationality Act, as in effect prior to April 1, 1980.

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

75.11(2) *Citizenship and alienage.*

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

(1) A citizen or national of the United States.

(2) A qualified alien residing in the United States before August 22, 1996.

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

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

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

(6) An alien whose deportation is being withheld under Section 243(h) of the Immigration and Nationality Act.

(7) A qualified alien veteran who has an honorable discharge that is not due to alienage.

(8) A qualified alien who is on active duty in the Armed Forces of the United States other than active duty for training.

(9) A qualified alien who is the spouse or unmarried dependent child of a qualified alien described in subparagraph (7) or (8), including a surviving spouse who has not remarried.

(10) A qualified alien who has resided in the United States for a period of at least five years.

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

(1) As a condition of eligibility, all applicants for Medicaid shall attest to their citizenship or alien status by signing the application form which contains the same declaration.

(2) As a condition of continued eligibility, SSI-related Medicaid members not actually receiving SSI who have been continuous members since August 1, 1988, shall attest to their citizenship or alien status by signing the application form which contains a similar declaration at time of review.

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

1. Application for Food Assistance, Form 470-0306 or 470-0307 (Spanish);
2. Health and Financial Support Application, Form 470-0462 or 470-0466 (Spanish);
3. Review/Recertification Eligibility Document, Form 470-2881, 470-2881(S), 470-2881(M), or 470-2881(MS);

c. Except as provided in paragraph *"f,"* applicants or members for whom an attestation of United States citizenship has been made pursuant to paragraph *"b"* shall present satisfactory documentation of citizenship or nationality as defined in paragraph *"d," "e,"* or *"i."* A reference to a form in paragraph *"d"* or *"e"* includes any successor form. An applicant or member shall have a reasonable period to obtain and provide required documentation of citizenship or nationality.

(1) For the purposes of this requirement, the "reasonable period" begins on the date a written request for documentation or a notice pursuant to subparagraph 75.11(2)*"i"*(2) is issued to an applicant or member, whichever is later, and continues for 90 days.

(2) Medicaid shall be approved for new applicants and continue for members not previously required to provide documentation of citizenship or nationality until the end of the reasonable period to obtain and provide required documentation of citizenship or nationality. However, the receipt of Medicaid or HAWK-I benefits pending documentation of citizenship or nationality is limited to one reasonable period of up to 90 days under either program for each individual. Medicaid shall not be approved for an applicant or continued for a member who has already received benefits during any portion of a reasonable period until satisfactory documentation is provided.

(3) Retroactive eligibility pursuant to 441—subrule 76.5(1) is available only after documentation of citizenship or nationality has been provided pursuant to paragraph *"d," "e,"* or *"i."* The retroactive months are outside the "reasonable period" during which Medicaid coverage may be provided without required documentation of citizenship or nationality.

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

(1) A United States passport.

(2) Form N-550 or N-570 (Certificate of Naturalization) issued by the U.S. Citizenship and Immigration Services.

(3) Form N-560 or N-561 (Certificate of United States Citizenship) issued by the U.S. Citizenship and Immigration Services.

(4) A valid state-issued driver's license or other identity document described in Section 274A(b)(1)(D) of the United States Immigration and Nationality Act, but only if the state issuing the license or document either:

1. Requires proof of United States citizenship before issuance of the license or document; or
2. Obtains a social security number from the applicant and verifies before certification that the number is valid and is assigned to the applicant who is a citizen.

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

e. Satisfactory documentation of citizenship or nationality may also be demonstrated by the combination of:

(1) Any identity document described in Section 274A(b)(1)(D) of the United States Immigration and Nationality Act or any other documentation of personal identity that provides a reliable means of identification, as the secretary of the U.S. Department of Health and Human Services finds by regulation pursuant to 42 U.S.C. Section 1396b(x)(3)(D)(ii), and

(2) Any one of the following:

1. A certificate of birth in the United States.

2. Form FS-545 or Form DS-1350 (Certification of Birth Abroad) issued by the U.S. Citizenship and Immigration Services.

3. Form I-97 (United States Citizen Identification Card) issued by the U.S. Citizenship and Immigration Services.

4. Form FS-240 (Report of Birth Abroad of a Citizen of the United States) issued by the U.S. Citizenship and Immigration Services.

5. Another document that provides proof of United States citizenship or nationality, as the secretary of the U.S. Department of Health and Human Services may specify pursuant to 42 U.S.C. Section 1396b(x)(3)(C)(v).

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

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare).

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal Social Security Act, Section 223 or 202, based on disability (as defined in Section 223(d)).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act.

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

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

(6) The person has previously presented satisfactory documentary evidence of citizenship or nationality, as specified by the United States Secretary of Health and Human Services.

g. If no other identity documentation allowed by subparagraph 75.11(2)*"e"*(1) is available, identity may be documented by affidavit as described in this paragraph. However, affidavits cannot be used to document both identity and citizenship.

(1) For children under the age of 16, identity may be documented using Form 470-4386 or 470-4386(S), Affidavit of Identity, signed by the child's parent, guardian, or caretaker relative under penalty of perjury.

(2) For disabled persons who live in a residential care facility, identity may be documented using Form 470-4386 or 470-4386(S), Affidavit of Identity, signed by a residential care facility director or administrator under penalty of perjury.

h. If no other documentation that provides proof of United States citizenship or nationality allowed by subparagraph 75.11(2)*"e"*(2) is available, United States citizenship or nationality may be documented using Form 470-4373 or 470-4373(S), Affidavit of Citizenship. However, affidavits cannot be used to document both identity and citizenship.

(1) Two affidavits of citizenship are required. The person who signs the affidavit must provide proof of citizenship and identity. A person who is not related to the applicant or member must sign at least one of the affidavits.

(2) When affidavits of citizenship are used, Form 470-4374 or 470-4374(S), Affidavit Concerning Documentation of Citizenship, or an equivalent affidavit explaining why other evidence of citizenship does not exist or cannot be obtained must also be submitted and must be signed by the applicant or member or by another knowledgeable person (guardian or representative).

i. In lieu of a document listed in paragraph *"d"* or *"e,"* satisfactory documentation of citizenship or nationality may also be presented pursuant to this paragraph.

(1) Provision of an individual's name, social security number, and date of birth to the department shall constitute satisfactory documentation of citizenship and identity if submission of the name, social security number, and date of birth to the Social Security Administration produces a response that substantiates the individual's citizenship.

(2) If submission of the name, social security number, and date of birth to the Social Security Administration does not produce a response that substantiates the individual's citizenship, the department shall issue a written notice to the applicant or member giving the applicant or member 90 days to correct any errors in the name, social security number, or date of birth submitted, to correct any errors in the Social Security Administration's records, or to provide other documentation of citizenship or nationality pursuant to paragraph *"d"* or *"e."*

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

a. In determining the eligibility and amount of benefits of an alien, the income and resources of the alien shall be deemed to include the following:

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

(2) The income and resources of the spouse of the person who executed the affidavit of support.

b. When an alien attains citizenship through naturalization pursuant to Chapter 2 of Title III of the Immigration and Nationality Act or has worked 40 qualifying quarters of coverage as defined in Title II of the Social Security Act or can be credited with qualifying quarters as defined at subrule 75.11(1) and, in the case of any qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any federal means-tested public benefits, as defined in subrule 75.11(1), during any period, deeming of the sponsor's income and resources no longer applies.

75.11(4) *Eligibility for payment of emergency medical services.* Aliens who do not meet the provisions of subrule 75.11(2) and who would otherwise qualify except for their alien status are eligible to receive Medicaid for care and services necessary for the treatment of an emergency medical condition as defined in subrule 75.11(1). To qualify for payment under this provision:

a. The alien must meet all other eligibility criteria, including state residence requirements provided at rules 441—75.10(249A) and 441—75.53(249A), with the exception of rule 441—75.7(249A) and subrules 75.11(2) and 75.11(3).

b. The medical provider who treated the emergency medical condition or the provider's designee must submit verification of the existence of the emergency medical condition on either:

(1) Form 470-4299, Verification of Emergency Health Care Services; or

(2) A signed statement that contains the same information as requested by Form 470-4299.

This rule is intended to implement Iowa Code section 249A.3.

[**ARC 7932B**, IAB 7/1/09, effective 7/1/09; **ARC 8096B**, IAB 9/9/09, effective 10/14/09; **ARC 8642B**, IAB 4/7/10, effective 6/1/10; **ARC 8786B**, IAB 6/2/10, effective 6/1/10]

441—75.12(249A) Inmates of public institutions. A person is not eligible for medical assistance for any care or services received while the person is an inmate of a public institution. For the purpose of this rule, the phrase "inmate of a public institution" is defined by 42 CFR Section 435.1009, as amended on November 10, 1994.

This rule is intended to implement Iowa Code section 249A.3.

441—75.13(249A) Categorical relatedness.

75.13(1) *FMAP-related Medicaid eligibility.* Medicaid eligibility for persons who are under the age of 21, pregnant women, or specified relatives of dependent children who are not blind or disabled shall be determined using the income criteria in effect for the family medical assistance program (FMAP) as provided in subrule 75.1(14) unless otherwise specified. Income shall be considered prospectively.

75.13(2) *SSI-related Medicaid.* Except as otherwise provided in 441—Chapters 75 and 76, persons who are 65 years of age or older, blind, or disabled are eligible for Medicaid only if eligible for

the Supplemental Security Income (SSI) program administered by the United States Social Security Administration.

a. SSI policy reference. The statutes, regulations, and policy governing eligibility for SSI are found in Title XVI of the Social Security Act (42 U.S.C. Sections 1381 to 1383f), in the federal regulations promulgated pursuant to Title XVI (20 CFR 416.101 to 416.2227), and in Part 5 of the Program Operations Manual System published by the United States Social Security Administration. The Program Operations Manual System is available at Social Security Administration offices in Ames, Burlington, Carroll, Cedar Rapids, Clinton, Council Bluffs, Creston, Davenport, Decorah, Des Moines, Dubuque, Fort Dodge, Iowa City, Marshalltown, Mason City, Oskaloosa, Ottumwa, Sioux City, Spencer, Storm Lake, and Waterloo, or through the Department of Human Services, Division of Financial, Health, and Work Supports, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114.

b. Income considered. For SSI-related Medicaid eligibility purposes, income shall be considered prospectively.

c. Trust contributions. Income that a person contributes to a trust as specified at 75.24(3)*"b"* shall not be considered for purposes of determining eligibility for SSI-related Medicaid.

d. Conditional eligibility. For purposes of determining eligibility for SSI-related Medicaid, the SSI conditional eligibility process, by which a client may receive SSI benefits while attempting to sell excess resources, found at 20 CFR 416.1240 to 416.1245, is not considered an eligibility methodology.

e. Valuation of life estates and remainder interests. In the absence of other evidence, the value of a life estate or remainder interest in property shall be determined using the following table by multiplying the fair market value of the entire underlying property (including all life estates and all remainder interests) by the life estate or remainder interest decimal corresponding to the age of the life estate holder or other person whose life controls the life estate.

If a Medicaid applicant or recipient disputes the value determined using the following table, the applicant or recipient may submit other evidence and the value of the life estate or remainder interest shall be determined based on the preponderance of all the evidence submitted to or obtained by the department, including the value given by the following table.

Age	Life Estate	Remainder	Age	Life Estate	Remainder	Age	Life Estate	Remainder
0	.97188	.02812	37	.93026	.06974	74	.53862	.46138
1	.98988	.01012	38	.92567	.07433	75	.52149	.47851
2	.99017	.00983	39	.92083	.07917	76	.51441	.49559
3	.99008	.00992	40	.91571	.08429	77	.48742	.51258
4	.98981	.01019	41	.91030	.08970	78	.47049	.52951
5	.98938	.01062	42	.90457	.09543	79	.45357	.54643
6	.98884	.01116	43	.89855	.10145	80	.43569	.56341
7	.98822	.01178	44	.89221	.10779	81	.41967	.58033
8	.98748	.01252	45	.88558	.11442	82	.40295	.59705
9	.98663	.01337	46	.87863	.12137	83	.38642	.61358
10	.98565	.01435	47	.87137	.12863	84	.36998	.63002
11	.98453	.01547	48	.86374	.13626	85	.35359	.64641
12	.98329	.01671	49	.85578	.14422	86	.33764	.66236
13	.98198	.01802	50	.84743	.15257	87	.32262	.67738
14	.98066	.01934	51	.83674	.16126	88	.30859	.69141
15	.97937	.02063	52	.82969	.17031	89	.29526	.70474
16	.97815	.02185	53	.82028	.17972	90	.28221	.71779
17	.97700	.02300	54	.81054	.18946	91	.26955	.73045
18	.97590	.02410	55	.80046	.19954	92	.25771	.74229

Age	Life Estate	Remainder	Age	Life Estate	Remainder	Age	Life Estate	Remainder
19	.97480	.02520	56	.79006	.20994	93	.24692	.75308
20	.97365	.02635	57	.77931	.22069	94	.23728	.76272
21	.97245	.02755	58	.76822	.23178	95	.22887	.77113
22	.97120	.02880	59	.75675	.24325	96	.22181	.77819
23	.96986	.03014	60	.74491	.25509	97	.21550	.78450
24	.96841	.03159	61	.73267	.26733	98	.21000	.79000
25	.96678	.03322	62	.72002	.27998	99	.20486	.79514
26	.96495	.03505	63	.70696	.29304	100	.19975	.80025
27	.96290	.03710	64	.69352	.30648	101	.19532	.80468
28	.96062	.03938	65	.67970	.32030	102	.19054	.80946
29	.95813	.04187	66	.66551	.33449	103	.18437	.81563
30	.95543	.04457	67	.65098	.343902	104	.17856	.82144
31	.95254	.04746	68	.63610	.363690	105	.16962	.83038
32	.94942	.05058	69	.62086	.37914	106	.15488	.84512
33	.94608	.05392	70	.60522	.39478	107	.13409	.86591
34	.94250	.05750	71	.58914	.41086	108	.10068	.89932
35	.93868	.06132	72	.57261	.42739	109	.04545	.95455
36	.93460	.06540	73	.55571	.44429			

75.13(3) *Resource eligibility for SSI-related Medicaid for children.* Resources of all household members shall be disregarded when determining eligibility for children under any SSI-related coverage group except for those groups at subrules 75.1(3), 75.1(4), 75.1(6), 75.1(9), 75.1(10), 75.1(12), 75.1(13), 75.1(23), 75.1(25), 75.1(29), 75.1(33), 75.1(34), 75.1(36), 75.1(37), and 75.1(38).

This rule is intended to implement Iowa Code section 249A.3.

441—75.14(249A) Establishing paternity and obtaining support.

75.14(1) As a condition of eligibility, adult Medicaid applicants and members in households with an absent parent shall cooperate in obtaining medical support for themselves and for any other person in the household for whom Medicaid is requested and for whom the applicant or member can legally assign rights for medical support, except when the applicant or member has good cause for refusal to cooperate as defined in subrule 75.14(8).

a. The adult applicant or member shall cooperate in the following:

(1) Identifying and locating the parent of the child for whom Medicaid is requested.

(2) Establishing the paternity of a child born out of wedlock for whom Medicaid is requested.

(3) Obtaining medical support and payments for medical care for the applicant or member and for a child for whom Medicaid is requested.

(4) Rescinded IAB 2/3/93, effective 4/1/93.

b. Cooperation is defined as including the following actions by the adult applicant or member upon request:

(1) Appearing at the income maintenance unit or the child support recovery unit to provide verbal or written information or documentary evidence known to, possessed by or reasonably obtainable by the applicant or member that is relevant to achieving the objectives of the child support recovery program.

(2) Appearing as a witness at judicial or other hearings or proceedings.

(3) Providing information, or attesting to the lack of information, under penalty of perjury.

c. Upon request, the adult applicant or member shall cooperate with the department in supplying information with respect to the absent parent, the receipt of medical support or payments for medical care, and the establishment of paternity, to the extent necessary to establish eligibility for assistance and permit an appropriate referral to the child support recovery unit.

d. Upon request, the adult applicant or member shall cooperate with the child support recovery unit to the extent of supplying all known information and documents pertaining to the location of the absent parent and taking action as may be necessary to secure medical support and payments for medical care or to establish paternity. This includes completing and signing documents determined to be necessary by the state's attorney for any relevant judicial or administrative process.

e. The child support recovery unit shall make the determination of whether or not the adult applicant or member has cooperated for the purposes of this rule.

75.14(2) Failure of an adult applicant or member to cooperate shall result in denial or cancellation of the noncooperating adult's Medicaid benefits. In family medical assistance program (FMAP)-related Medicaid cases, all deductions and disregards described at paragraphs 75.57(2)*"a," "b,"* and *"c"* shall be allowed when otherwise applicable.

75.14(3) Each Medicaid applicant or member who is required to cooperate with the child support recovery unit shall have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing medical support and payments for medical care. The provisions set forth in subrules 75.14(8) to 75.14(12) shall be used when making a determination of the existence of good cause.

75.14(4) Each Medicaid applicant or member shall assign to the department any rights to medical support and payments for medical care from any other person for which the person can legally make assignment. This shall include rights to medical support and payments for medical care on the applicant's or member's own behalf or on behalf of any other family member for whom the applicant or member is applying. An assignment is effective the same date the eligibility information is entered into the automated benefit calculation system and is effective for the entire period for which eligibility is granted. Support payments not intended for medical support shall not be assigned to the department.

75.14(5) Rescinded IAB 6/2/10, effective 8/1/10.

75.14(6) Pregnant women establishing eligibility under the mothers and children (MAC) coverage group as provided at subrule 75.1(28) shall be exempt from the provisions in this rule for any born child for whom the pregnant woman applies for or receives Medicaid. Additionally, any previously pregnant woman eligible for postpartum coverage under the provision of subrule 75.1(24) shall not be subject to the provisions in this rule until after the end of the month in which the 60-day postpartum period expires. Pregnant women establishing eligibility under any other coverage groups except those set forth in subrule 75.1(24) or 75.1(28) shall be subject to the provisions in this rule when establishing eligibility for born children. However, when a pregnant woman who is subject to these provisions fails to cooperate, the woman shall lose eligibility under her current coverage group and her eligibility for Medicaid shall be automatically redetermined under subrule 75.1(28).

75.14(7) Notwithstanding subrule 75.14(6), any pregnant woman or previously pregnant woman establishing eligibility under subrule 75.1(28) or 75.1(24) shall not be exempt from the provisions of 75.14(4) that require an adult applicant or member to assign any rights to medical support and payments for medical care.

75.14(8) Good cause for refusal to cooperate. Good cause shall exist when it is determined that cooperation in establishing paternity and securing support is against the best interests of the child.

a. The income maintenance unit shall determine that cooperation is against the child's best interest when the applicant's or member's cooperation in establishing paternity or securing support is reasonably anticipated to result in:

(1) Physical or emotional harm to the child for whom support is to be sought; or

(2) Physical or emotional harm to the parent or specified relative with whom the child is living which reduces the person's capacity to care for the child adequately.

(3) Physical harm to the parent or specified relative with whom the child is living which reduces the person's capacity to care for the child adequately; or

(4) Emotional harm to the parent or specified relative with whom the child is living of a nature or degree that it reduces the person's capacity to care for the child adequately.

b. The income maintenance unit shall determine that cooperation is against the child's best interest when at least one of the following circumstances exists, and the income maintenance unit believes that

because of the existence of that circumstance, in the particular case, proceeding to establish paternity or secure support would be detrimental to the child for whom support would be sought.

(1) The child was conceived as the result of incest or forcible rape.

(2) Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction.

(3) The applicant or member is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish the child for adoption, and the discussions have not gone on for more than three months.

c. Physical harm and emotional harm shall be of a serious nature in order to justify a finding of good cause. A finding of good cause for emotional harm shall be based only upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

d. When the good cause determination is based in whole or in part upon the anticipation of emotional harm to the child, the parent, or the specified relative, the following shall be considered:

(1) The present emotional state of the individual subject to emotional harm.

(2) The emotional health history of the individual subject to emotional harm.

(3) Intensity and probable duration of the emotional impairment.

(4) The degree of cooperation required.

(5) The extent of involvement of the child in the paternity establishment or support enforcement activity to be undertaken.

75.14(9) Claiming good cause. Each Medicaid applicant or member who is required to cooperate with the child support recovery unit shall have the opportunity to claim good cause for refusing to cooperate in establishing paternity or securing support payments.

a. Before requiring cooperation, the department shall notify the applicant or member using Form 470-0169 or 470-0169(S), Requirements of Support Enforcement, of the right to claim good cause as an exception to the cooperation requirement and of all the requirements applicable to a good cause determination.

b. The initial notice advising of the right to refuse to cooperate for good cause shall:

(1) Advise the applicant or member of the potential benefits the child may derive from the establishment of paternity and securing support.

(2) Advise the applicant or member that by law cooperation in establishing paternity and securing support is a condition of eligibility for the Medicaid program.

(3) Advise the applicant or member of the sanctions provided for refusal to cooperate without good cause.

(4) Advise the applicant or member that good cause for refusal to cooperate may be claimed and that if the income maintenance unit determines, in accordance with these rules, that there is good cause, the applicant or member will be excused from the cooperation requirement.

(5) Advise the applicant or member that upon request, or following a claim of good cause, the income maintenance unit will provide further notice with additional details concerning good cause.

c. When the applicant or member makes a claim of good cause or requests additional information regarding the right to file a claim of good cause, the income maintenance unit shall issue a second notice, Form 470-0170, Requirements of Claiming Good Cause. To claim good cause, the applicant or member shall sign and date Form 470-0170 and return it to the income maintenance unit. This form:

(1) Indicates that the applicant or member must provide corroborative evidence of good cause circumstance and must, when requested, furnish sufficient information to permit the county office to investigate the circumstances.

(2) Informs the applicant or member that, upon request, the income maintenance unit will provide reasonable assistance in obtaining the corroborative evidence.

(3) Informs the applicant or member that on the basis of the corroborative evidence supplied and the agency's investigation when necessary, the income maintenance unit shall determine whether cooperation would be against the best interests of the child for whom support would be sought.

(4) Lists the circumstances under which cooperation may be determined to be against the best interests of the child.

(5) Informs the applicant or member that the child support recovery unit may review the income maintenance unit's findings and basis for a good cause determination and may participate in any hearings concerning the issue of good cause.

(6) Informs the applicant or member that the child support recovery unit may attempt to establish paternity and collect support in those cases where the income maintenance unit determines that this can be done without risk to the applicant or member if done without the applicant's or member's participation.

d. The applicant or member who refuses to cooperate and who claims to have good cause for refusing to cooperate has the burden of establishing the existence of a good cause circumstance. Failure to meet these requirements shall constitute a sufficient basis for the income maintenance unit to determine that good cause does not exist. The applicant or member shall:

(1) Specify the circumstances that the applicant or member believes provide sufficient good cause for not cooperating.

(2) Corroborate the good cause circumstances.

(3) When requested, provide sufficient information to permit an investigation.

75.14(10) Determination of good cause. The income maintenance unit shall determine whether good cause exists for each Medicaid applicant or member who claims to have good cause.

a. The income maintenance unit shall notify the applicant or member of its determination that good cause does or does not exist. The determination shall:

(1) Be in writing.

(2) Contain the income maintenance unit's findings and basis for determination.

(3) Be entered in the case record.

b. The determination of whether or not good cause exists shall be made within 45 days from the day the good cause claim is made. The income maintenance unit may exceed this time standard only when:

(1) The case record documents that the income maintenance unit needs additional time because the information required to verify the claim cannot be obtained within the time standard, or

(2) The case record documents that the claimant did not provide corroborative evidence within the time period set forth in subrule 75.14(11).

c. When the income maintenance unit determines that good cause does not exist:

(1) The applicant or member shall be so notified and be afforded an opportunity to cooperate, withdraw the application for assistance, or have the case closed; and

(2) Continued refusal to cooperate will result in the loss of Medicaid for the person who refuses to cooperate.

d. The income maintenance unit shall make a good cause determination based on the corroborative evidence supplied by the applicant or member only after the income maintenance unit has examined the evidence and found that it actually verifies the good cause claim.

e. Before making a final determination of good cause for refusing to cooperate, the income maintenance unit shall:

(1) Afford the child support recovery unit the opportunity to review and comment on the findings and basis for the proposed determination, and

(2) Consider any recommendation from the child support recovery unit.

f. The child support recovery unit may participate in any appeal hearing that results from an applicant's or member's appeal of an agency action with respect to a decision on a claim of good cause.

g. Assistance shall not be denied, delayed, or discontinued pending a determination of good cause for refusal to cooperate when the applicant or member has specified the circumstances under which good cause can be claimed and provided the corroborative evidence and any additional information needed to establish good cause.

h. The income maintenance unit shall:

(1) Periodically, but not less frequently than every six months, review those cases in which the agency has determined that good cause exists based on a circumstance that is subject to change.

(2) When it determines that circumstances have changed so that good cause no longer exists, rescind its findings and proceed to enforce the requirements pertaining to cooperation in establishing paternity and securing support.

75.14(11) Proof of good cause. The applicant or member who claims good cause shall provide corroborative evidence within 20 days from the day the claim was made. In exceptional cases where the income maintenance unit determines that the applicant or member requires additional time because of the difficulty in obtaining the corroborative evidence, the income maintenance unit shall allow a reasonable additional period upon approval by the worker's immediate supervisor.

a. A good cause claim may be corroborated with the following types of evidence:

(1) Birth certificates or medical or law enforcement records which indicate that the child was conceived as the result of incest or forcible rape.

(2) Court documents or other records which indicate that legal proceedings for adoption are pending before a court of competent jurisdiction.

(3) Court, medical, criminal, child protective services, social services, psychological, or law enforcement records which indicate that the putative father or absent parent might inflict physical or emotional harm on the child or specified relative.

(4) Medical records which indicate emotional health history and present emotional health status of the specified relative or the children for whom support would be sought; or written statements from a mental health professional indicating a diagnosis or prognosis concerning the emotional health of the specified relative or the child for whom support would be sought.

(5) A written statement from a public or licensed private social agency that the applicant or member is being assisted by the agency to resolve the issue of whether to keep the child or relinquish the child for adoption.

(6) Sworn statements from individuals other than the applicant or member with knowledge of the circumstances which provide the basis for the good cause claim.

b. When, after examining the corroborative evidence submitted by the applicant or member, the income maintenance unit wishes to request additional corroborative evidence which is needed to permit a good cause determination, the income maintenance unit shall:

(1) Promptly notify the applicant or member that additional corroborative evidence is needed, and

(2) Specify the type of document which is needed.

c. When the applicant or member requests assistance in securing evidence, the income maintenance unit shall:

(1) Advise the applicant or member how to obtain the necessary documents, and

(2) Make a reasonable effort to obtain any specific documents which the applicant or member is not reasonably able to obtain without assistance.

d. When a claim is based on the applicant's or member's anticipation of physical harm and corroborative evidence is not submitted in support of the claim:

(1) The income maintenance unit shall investigate the good cause claim when the office believes that the claim is credible without corroborative evidence and corroborative evidence is not available.

(2) Good cause shall be found when the claimant's statement and investigation which is conducted satisfies the county office that the applicant or member has good cause for refusing to cooperate.

(3) A determination that good cause exists shall be reviewed and approved or disapproved by the worker's immediate supervisor and the findings shall be recorded in the case record.

e. The income maintenance unit may further verify the good cause claim when the applicant's or member's statement of the claim together with the corroborative evidence do not provide sufficient basis for making a determination. When the income maintenance unit determines that it is necessary, the unit may conduct an investigation of good cause claims to determine that good cause does or does not exist.

f. When it conducts an investigation of a good cause claim, the income maintenance unit shall:

(1) Contact the absent parent or putative father from whom support would be sought when the contact is determined to be necessary to establish the good cause claim.

(2) Before making the necessary contact, notify the applicant or member so the applicant or member may present additional corroborative evidence or information so that contact with the parent or putative

father becomes unnecessary, withdraw the application for assistance or have the case closed, or have the good cause claim denied.

75.14(12) Enforcement without specified relative's cooperation. When the income maintenance unit makes a determination that good cause exists, the unit shall also make a determination of whether or not child support enforcement can proceed without risk of harm to the child or specified relative when the enforcement or collection activities do not involve their participation.

a. The child support recovery unit shall have an opportunity to review and comment on the findings and basis for the proposed determination and the income maintenance unit shall consider any recommendations from the child support recovery unit.

b. The determination shall be in writing, contain the income maintenance unit's findings and basis for the determination, and be entered into the case record.

c. When the income maintenance unit excuses cooperation but determines that the child support recovery unit may proceed to establish paternity or enforce support, the income maintenance unit shall notify the applicant or member to enable the individual to withdraw the application for assistance or have the case closed.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

[**ARC 8785B**, IAB 6/2/10, effective 8/1/10]

441—75.15(249A) Disqualification for long-term care assistance due to substantial home equity. Notwithstanding any other provision of this chapter, if an individual's equity interest in the individual's home exceeds $500,000, the individual shall not be eligible for medical assistance with respect to nursing facility services or other long-term care services except as provided in 75.15(2). This provision is effective for all applications or requests for payment of long-term care services filed on or after January 1, 2006.

75.15(1) The limit on the equity interest in the individual's home for purposes of this rule shall be increased from year to year, beginning with 2011, based on the percentage increase in the consumer price index for all urban consumers (all items; United States city average), rounded to the nearest $1,000.

75.15(2) Disqualification based on equity interest in the individual's home shall not apply when one of the following persons is lawfully residing in the home:

a. The individual's spouse; or

b. The individual's child who is under age 21 or is blind or disabled as defined in Section 1614 of the federal Social Security Act.

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

441—75.16(249A) Client participation in payment for medical institution care. Medicaid clients are required to participate in the cost of medical institution care. However, no client participation is charged when the combination of Medicare payments and the Medicaid benefits available to qualified Medicare beneficiaries covers the cost of institutional care.

75.16(1) *Income considered in determining client participation.* The department determines the amount of client participation based on the client's total monthly income, with the following exceptions:

a. *FMAP-related clients.* The income of a client and family whose eligibility is FMAP-related is not available for client participation when both of the following conditions exist:

(1) The client has a parent or child at home.

(2) The family's income is considered together in determining eligibility.

b. *SSI-related clients who are employed.* If a client receives SSI and is substantially gainfully employed, as determined by the Social Security Administration, the client shall have the SSI and any mandatory state supplementary assistance payment exempt from client participation for the two full months after entry to a medical institution.

c. *SSI-related clients returning home within three months.* If the Social Security Administration continues a client's SSI or federally administered state supplementary assistance payments for three months because it is expected that the client will return home within three months, these payments shall be exempt from client participation.

d. Married couples.

(1) Institutionalized spouse and community spouse. If there is a community spouse, only the institutionalized person's income shall be considered in determining client participation.

(2) Both spouses institutionalized. Client participation for each partner in a marriage shall be based on one-half of the couple's combined income when the partners are considered together for eligibility. Client participation for each partner who is considered individually for eligibility shall be determined individually from each person's income.

(3) Rescinded, IAB 7/11/90, effective 7/1/90.

e. State supplementary assistance recipients. The amount of client participation that a client paid under the state supplementary assistance program is not available for Medicaid client participation in the month of the client's entry to a medical institution.

f. Foster care recipients. The amount of income paid for foster care for the days that a child is in foster care in the same month as entry to a medical institution is not available for client participation.

g. Clients receiving a VA pension. The amount of $90 of veteran's pension income shall be exempt from client participation if the client is a veteran or a surviving spouse of a veteran who:

(1) Receives a reduced pension pursuant to 38 U.S.C. Section 5503(d)(2), or

(2) Resides at the Iowa Veterans Home and does not have a spouse or minor child.

75.16(2) *Allowable deductions from income.* In determining the amount of client participation, the department allows the following deductions from the client's income, taken in the order they appear:

a. Ongoing personal needs allowance. All clients shall retain $50 of their monthly income for a personal needs allowance. (See rules 441—81.23(249A), 441—82.19(249A), and 441—85.47(249A) regarding potential state-funded personal needs supplements.)

(1) If the client has a trust described in Section 1917(d)(4) of the Social Security Act (including medical assistance income trusts and special needs trusts), a reasonable amount paid or set aside for necessary expenses of the trust is added to the personal needs allowance. This amount shall not exceed $10 per month except with court approval.

(2) If the client has earned income, an additional $65 is added to the ongoing personal needs allowance from the earned income only.

(3) Rescinded IAB 7/4/07, effective 7/1/07.

b. Personal needs in the month of entry.

(1) Single person. A single person shall be given an allowance for stated home living expenses during the month of entry, up to the amount of the SSI benefit for a single person.

(2) Spouses entering institutions together and living together. Partners in a marriage who enter a medical institution in the same month and live in the same room shall be given an allowance for stated home living expenses during the month of entry, up to the amount of the SSI benefit for a couple.

(3) Spouses entering an institution together but living apart. Partners in a marriage who enter a medical institution during the same month and who are considered separately for eligibility shall each be given an allowance for stated home living expenses during the month of entry, up to one-half of the amount of the SSI benefit for a married couple. However, if the income of one spouse is less than one-half of the SSI benefit for a couple, the remainder of the allowance shall be given to the other spouse. If the couple's eligibility is determined together, an allowance for stated home living expenses shall be given to them during the month of entry up to the SSI benefit for a married couple.

(4) Community spouse enters a medical institution. When the second member of a married couple enters a medical institution in a later month, that spouse shall be given an allowance for stated expenses during the month of entry, up to the amount of the SSI benefit for one person.

c. Personal needs in the month of discharge. The client shall be allowed a deduction for home living expenses in the month of discharge. The amount of the deduction shall be the SSI benefit for one person (or for a couple, if both members are discharged in the same month). This deduction does not apply when a spouse is at home.

d. Maintenance needs of spouse and other dependents.

(1) Persons covered. An ongoing allowance shall be given for the maintenance needs of a community spouse. The allowance is limited to the extent that income of the institutionalized spouse is

made available to or for the benefit of the community spouse. If there are minor or dependent children, dependent parents, or dependent siblings of either spouse who live with the community spouse, an ongoing allowance shall also be given to meet their needs.

(2) Income considered. The verified gross income of the spouse and dependents shall be considered in determining maintenance needs. The gross income of the spouse and dependent shall include all monthly earned and unearned income and assistance from the family investment program (FIP), supplemental security income (SSI), and state supplementary assistance (SSA). It shall also include the proceeds of any annuity or contract for sale of real property. Otherwise, the income shall be considered as the SSI program considers income. In addition, the spouse and dependents shall be required to apply for every income benefit for which they are eligible except that they shall not be required to accept SSI, FIP or SSA in lieu of the maintenance needs allowance. Failure to apply for all benefits shall mean reduction of the maintenance needs allowance by the amount of the anticipated income from the source not applied for.

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from the maximum amount allowed as a minimum monthly maintenance needs allowance for the community spouse by Section 1924(d)(3)(C) of the Social Security Act (42 U.S.C. § 1396r-5(d)(3)(C)). (This amount is indexed for inflation annually according to the consumer price index.)

However, if either spouse has established through the appeal process that the community spouse needs income above the minimum monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

(4) Needs of other dependents. The maintenance needs of the other dependents shall be established by subtracting each person's gross income from 133 percent of the monthly federal poverty level for a family of two and dividing the result by three. (Effective July 1, 1992, the percent shall be 150 percent.)

e. Maintenance needs of children (without spouse). When the client has children under 21 at home, an ongoing allowance shall be given to meet the children's maintenance needs.

The income of the children is considered in determining maintenance needs. The children's countable income shall be their gross income less the disregards allowed in the FIP program.

The children's maintenance needs shall be determined by subtracting the children's countable income from the FIP payment standard for that number of children. (However, if the children receive FIP, no deduction is allowed for their maintenance needs.)

f. Client's medical expenses. A deduction shall be allowed for the client's incurred expenses for medical or remedial care that are not subject to payment by a third party and were not incurred for long-term care services during the imposition of a transfer of assets penalty period pursuant to rule 441—75.23(249A). This includes Medicare premiums and other health insurance premiums, deductibles or coinsurance, and necessary medical or remedial care recognized under state law but not covered under the state Medicaid plan.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

[**ARC 8444B**, IAB 1/13/10, effective 3/1/10]

441—75.17(249A) Verification of pregnancy. For the purpose of establishing Medicaid eligibility for pregnant women under this chapter, the applicant's self-declaration of the pregnancy and the date of conception shall serve as verification of pregnancy, unless questionable.

75.17(1) *Multiple pregnancy.* If the pregnant woman claims to be carrying more than one fetus, a medical professional who has examined the woman must verify the number of fetuses in order for more than one to be considered in the household size.

75.17(2) *Cost of examination.* When an examination is required and other medical resources are not available to meet the expense of the examination, the provider shall be authorized to make the examination and submit the claim for payment.

This rule is intended to implement Iowa Code section 249A.3.

441—75.18(249A) Continuous eligibility for pregnant women. A pregnant woman who applies for Medicaid prior to the end of her pregnancy and subsequently establishes initial Medicaid eligibility under the provisions of this chapter shall remain continuously eligible throughout the pregnancy and the 60-day postpartum period, as provided in subrule 75.1(24), regardless of any changes in family income.

This rule is intended to implement Iowa Code section 249A.3.

441—75.19(249A) Continuous eligibility for children. A child under the age of 19 who is determined eligible for ongoing Medicaid shall retain that eligibility for up to 12 months regardless of changes in family circumstances except as described in this rule.

75.19(1) *Exceptions to coverage.* This rule does not apply to the following children:

a. Children whose eligibility was determined under the newborn coverage group described at subrule 75.1(20).

b. Children whose eligibility was determined under the medically needy coverage group described at subrule 75.1(35).

c. Children whose medical assistance is state-funded only.

d. Children who are eligible only in a retroactive month.

e. Children whose citizenship is not verified within the "reasonable period" described at paragraph 75.11(2)*"c."*

75.19(2) *Duration of coverage.* Coverage under this rule shall extend through the earliest of the following months:

a. The month of the household's annual eligibility review;

b. The month when the child reaches the age of 19; or

c. The month when the child moves out of Iowa.

75.19(3) *Assignment of review date.* Children entering an existing Medicaid household shall be assigned the same annual eligibility review date as that established for the household.

This rule is intended to implement Iowa Code Supplement section 249A.3 as amended by 2008 Iowa Acts, House File 2539.

[**ARC 8786B**, IAB 6/2/10, effective 6/1/10]

441—75.20(249A) Disability requirements for SSI-related Medicaid.

75.20(1) *Applicants receiving federal benefits.* An applicant receiving supplemental security income on the basis of disability, social security disability benefits under Title II of the Social Security Act, or railroad retirement benefits based on the Social Security law definition of disability by the Railroad Retirement Board, shall be deemed disabled without further determination of disability.

75.20(2) *Applicants not receiving federal benefits.* When disability has not been established based on the receipt of social security disability or railroad retirement benefits based on the same disability criteria as used by the Social Security Administration, the department shall determine eligibility for SSI-related Medicaid based on disability as follows:

a. A Social Security Administration (SSA) disability determination under either a social security disability (Title II) application or a supplemental security income application is binding on the department until changed by SSA unless the applicant meets one of the following criteria:

(1) The applicant alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(2) The applicant alleges more than 12 months after the most recent SSA determination denying disability that the applicant's condition has changed or deteriorated since that SSA determination and alleges a new period of disability which meets the durational requirements, and has not applied to SSA for a determination with respect to these allegations.

(3) The applicant alleges less than 12 months after the most recent SSA determination denying disability that the applicant's condition has changed or deteriorated since that SSA determination, alleges a new period of disability which meets the durational requirements, and:

1. The applicant has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations, or

2. The applicant no longer meets the nondisability requirements for SSI but may meet the department's nondisability requirements for Medicaid eligibility.

b. When there is no binding SSA decision and the department is required to establish eligibility for SSI-related Medicaid based on disability, initial determinations shall be made by disability determination services, a bureau of the Iowa department of education under the division of vocational rehabilitation services. The applicant or the applicant's authorized representative shall complete and submit Form 470-4459 or 470-4459(S), Authorization to Disclose Information to the Department of Human Services, and either:

(1) Form 470-2465, Disability Report for Adults, if the applicant is aged 18 or over; or

(2) Form 470-3912, Disability Report for Children, if the applicant is under the age of 18.

c. When an SSA decision on disability is pending when the person applies for Medicaid or when the person applies for either Title II benefits or SSI within ten working days of the Medicaid application, the department shall stay a decision on disability pending the SSA decision on disability.

75.20(3) *Time frames for decisions.* Determination of eligibility based on disability shall be completed within 90 days unless the applicant or an examining physician delays or fails to take a required action, or there is an administrative or other emergency beyond the department's or applicant's control.

75.20(4) *Redeterminations of disability.* In connection with any independent determination of disability, the department will determine whether reexamination of the member's medical condition will be necessary for periodic redeterminations of eligibility. When reexamination is required, the member or the member's authorized representative shall complete and submit the same forms as required in paragraph 75.20(2)*"b."*

75.20(5) *Members whose disability was determined by the department.* When a Medicaid member has been approved for Medicaid based on disability determined by the department and later is determined by SSA not to be disabled for SSI, the member shall continue to be considered disabled for Medicaid eligibility purposes for 65 days from the date of the SSA denial. If at the end of the 65 days there is no appeal to the SSA, Medicaid shall be canceled with timely notice. If there is an appeal within 65 days, the member shall continue to be considered disabled for Medicaid eligibility purposes until a final SSA decision.

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

441—75.21(249A) Health insurance premium payment (HIPP) program. Under the health insurance premium payment program, the department shall pay for the cost of premiums, coinsurance and deductibles for Medicaid-eligible individuals when the department determines that those costs will be less than the cost of paying for the individual's care through Medicaid. Payment shall include only the cost to the Medicaid member or household.

75.21(1) *Condition of eligibility for group plans.* The Medicaid member or a person acting on the member's behalf shall cooperate in providing information necessary for the department to establish availability and the cost-effectiveness of a group health plan. When the department has determined that a group health plan is cost-effective, enrollment in the plan is a condition of Medicaid eligibility unless it can be established that insurance is being maintained on the Medicaid members through another source (e.g., an absent parent is maintaining insurance on the Medicaid-eligible children).

a. When a parent fails to provide information necessary to determine availability and cost-effectiveness of a group health plan, fails to enroll in a group health plan that has been determined cost-effective, or disenrolls from a group health plan that has been determined cost-effective, Medicaid benefits of the parent shall be terminated unless good cause for failure to cooperate is established.

b. Good cause for failure to cooperate shall be established when the parent or family demonstrates one or more of the following conditions exist:

(1) There was a serious illness or death of the parent or a member of the parent's family.

(2) There was a family emergency or household disaster, such as a fire, flood, or tornado.

(3) The parent offers a good cause beyond the parent's control.

(4) There was a failure to receive the department's request for information or notification for a reason not attributable to the parent. Lack of a forwarding address is attributable to the parent.

c. Medicaid benefits of a child shall not be terminated due to the failure of the parent to cooperate. Additionally, the Medicaid benefits of a spouse who cannot enroll in the plan independently of the other spouse shall not be terminated due to the other spouse's failure to cooperate.

d. The presence of good cause does not relieve the parent of the requirement to cooperate. When necessary, the parent may be given additional time to cooperate when good cause is determined to exist.

75.21(2) *Individual health plans.* Participation in an individual health plan is not a condition of Medicaid eligibility. The department shall pay for the cost of premiums, coinsurance, and deductibles of individual health insurance plans for a Medicaid member if:

a. A household member is currently enrolled in the plan; and

b. The health plan is cost-effective as defined in subrule 75.21(3).

75.21(3) *Cost-effectiveness.* Cost-effectiveness for both group and individual health plans shall mean the expenditures in Medicaid payments for a set of services are likely to be greater than the cost of paying the premiums and cost-sharing obligations under the health plan for those services. When determining the cost-effectiveness of the health plan, the following data shall be considered:

a. The cost to the Medicaid member or household of the insurance premium, coinsurance, and deductibles. No cost paid by an employer or other plan sponsor shall be considered in the cost-effectiveness determination.

b. The scope of services covered under the health plan, including but not limited to exclusions for preexisting conditions.

c. The average anticipated Medicaid utilization, by age, sex, institutional status, Medicare eligibility, and coverage group, for members covered under the health plan.

d. The specific health-related circumstances of the members covered under the health plan. The HIPP Medical History Questionnaire, Form 470-2868, shall be used to obtain this information. When the information indicates any health conditions that could be expected to result in higher than average bills for any Medicaid member:

(1) If the member is currently covered by the health plan, the department shall obtain from the insurance company a summary of the member's paid claims for the previous 12 months. If there is sufficient evidence to indicate that such claims can be expected to continue in the next 12 months, the claims will be considered in determining the cost-effectiveness of the plan. The cost of providing the health insurance is compared to the actual claims to determine the cost-effectiveness of providing the coverage.

(2) If the member was not covered by the health plan in the previous 12 months, paid Medicaid claims may be used to project the cost-effectiveness of the plan.

e. Annual administrative expenditures of $50 per Medicaid member covered under the health plan.

f. Whether the estimated savings to Medicaid for members covered under the health insurance plan are at least $5 per month per household.

75.21(4) *Coverage of non-Medicaid-eligible family members.*

a. When a group health plan is determined to be cost-effective, the department shall pay for health insurance premiums for non-Medicaid-eligible family members if a non-Medicaid-eligible family member must be enrolled in the health plan in order to obtain coverage for the Medicaid-eligible family members. However:

(1) The needs of the non-Medicaid-eligible family members shall not be taken into consideration when determining cost-effectiveness, and

(2) Payments for deductibles, coinsurances or other cost-sharing obligations shall not be made on behalf of family members who are not Medicaid-eligible.

b. When an individual health plan is determined cost-effective, the department shall pay for the portion of the premium necessary to cover the Medicaid-eligible family members. If the portion of the premium to cover the Medicaid-eligible family members cannot be established, the department shall pay the entire premium. The family members who are not Medicaid-eligible shall not be considered when determining cost-effectiveness.

75.21(5) *Exceptions to payment.* Premiums shall not be paid for health insurance plans under any of the following circumstances:

a. The insurance plan is that of an absent parent.

b. The insurance plan is an indemnity policy which supplements the policyholder's income or pays only a predetermined amount for services covered under the policy (e.g., $50 per day for hospital services instead of 80 percent of the charge).

c. The insurance plan is a school plan offered on basis of attendance or enrollment at the school.

d. The premium is used to meet a spenddown obligation under the medically needy program, as provided in subrule 75.1(35), when all persons in the household are eligible or potentially eligible only under the medically needy program. When some of the household members are eligible for full Medicaid benefits under coverage groups other than medically needy, the premium shall be paid if it is determined to be cost-effective when considering only the persons receiving full Medicaid coverage. In those cases, the premium shall not be allowed as a deduction to meet the spenddown obligation for those persons in the household participating in the medically needy program.

e. The insurance plan is designed to provide coverage only for a temporary period of time (e.g., 30 to 180 days).

f. The persons covered under the plan are not Medicaid-eligible on the date the decision regarding eligibility for the HIPP program is made. No retroactive payments shall be made if the case is not Medicaid-eligible on the date of decision.

g. The person is eligible only for a coverage group that does not provide full Medicaid services, such as the specified low-income Medicare beneficiary (SLMB) coverage group in accordance with subrule 75.1(34) or the IowaCare program in accordance with the provisions of 441—Chapter 92. Members under the medically needy coverage group who must meet a spenddown are not eligible for HIPP payment.

h. Insurance coverage is being provided through the Health Insurance Plan of Iowa (HIPIOWA), in accordance with Iowa Code chapter 514E.

i. Insurance is being maintained on the Medicaid-eligible persons in the household through another source (e.g., an absent parent is maintaining insurance on the Medicaid-eligible children).

j. The insurance is a Medicare supplemental policy and the Health Insurance Premium Payment Application, Form 470-2875, was received on or after March 1, 1996.

k. The person has health coverage through Medicare. If other Medicaid members in the household are covered by the health plan, cost-effectiveness is determined without including the Medicare-covered member.

l. The health plan does not provide major medical coverage but pays only for specific situations (i.e., accident plans) or illnesses (i.e., cancer policy).

m. The health plan pays secondary to another plan.

n. The only Medicaid members covered by the health plan are currently in foster care.

o. All Medicaid members covered by the health plan are eligible for Medicaid only under subrule 75.1(43). This coverage group requires the parent to apply for, enroll in, and pay for coverage available from the employer as a condition of Medicaid eligibility for the children.

75.21(6) *Duplicate policies.* When more than one cost-effective health plan is available, the department shall pay the premium for only one plan. The member may choose the cost-effective plan in which to enroll.

75.21(7) *Discontinuation of premium payments.*

a. When the household loses Medicaid eligibility, premium payments shall be discontinued as of the month of Medicaid ineligibility.

b. When only part of the household loses Medicaid eligibility, the department shall complete a review in order to ascertain whether payment of the health insurance premium continues to be cost-effective. If the department determines that the health plan is no longer cost-effective, premium payment shall be discontinued pending timely and adequate notice.

c. If the household fails to cooperate in providing information necessary to establish ongoing eligibility, the department shall discontinue premium payment after timely and adequate notice. The

department shall request all information in writing and allow the household ten calendar days in which to provide it.

d. If the policyholder leaves the Medicaid household, premium payments shall be discontinued pending timely and adequate notice.

e. If the health plan is no longer available or the policy has lapsed, premium payments shall be discontinued as of the effective date of the termination of the coverage.

75.21(8) *Effective date of premium payment.* The effective date of premium payments for a cost-effective health plan shall be determined as follows:

a. Premium payments shall begin no earlier than the later of:

(1) The first day of the month in which the Employer's Statement of Earnings, Form 470-2844, the Health Insurance Premium Payment Application, Form 470-2875, or the automated HIPP referral, Form H301-1, is received by the HIPP unit; or

(2) The first day of the first month in which the health plan is determined to be cost-effective.

b. If the person is not enrolled in the health plan when eligibility for participation in the HIPP program is established, premium payments shall begin in the month in which the first premium payment is due after enrollment occurs.

c. If there was a lapse in coverage during the application process (e.g., the health plan is dropped and reenrollment occurs at a later date), premium payments shall not be made for any period of time before the current effective date of coverage.

d. In no case shall payments be made for premiums that were used as a deduction to income when determining client participation or the amount of the spenddown obligation.

e. The Employer Verification of Insurance Coverage, Form 470-3036, shall be used to verify the effective date of coverage and costs for persons enrolled in group health plans through an employer.

f. The effective date of coverage for individual health plans or for group health plans not obtained through an employer shall be verified by a copy of the certificate of coverage for the plan or by some other verification from the insurer.

75.21(9) *Method of premium payment.* Payments of premiums will be made directly to the insurance carrier except as follows:

a. The department may arrange for payment to an employer in order to circumvent a payroll deduction.

b. When an employer will not agree to accept premium payments from the department in lieu of a payroll deduction to the employee's wages, the department shall reimburse the employee directly for payroll deductions or for payments made directly to the employer for the payment of premiums. The department shall issue reimbursement to the employee five working days before the employee's pay date.

c. When premium payments are occurring through an automatic withdrawal from a bank account by the insurance carrier, the department may reimburse the policyholder for those withdrawals.

d. Payments for COBRA coverage shall be made directly to the insurance carrier or the former employer. Payments may be made directly to the former employee only in those cases where:

(1) Information cannot be obtained for direct payment, or

(2) The department pays for only part of the total premium.

e. Reimbursements may also be paid by direct deposit to the member's own account in a financial institution or by means of electronic benefits transfer.

75.21(10) *Payment of claims.* Claims from medical providers for persons participating in this program shall be paid in the same manner as claims are paid for other persons with a third-party resource in accordance with the provisions of 441—Chapters 79 and 80.

75.21(11) *Reviews of cost-effectiveness and eligibility.* Reviews of cost-effectiveness and eligibility shall be completed annually and may be conducted more frequently at the discretion of the department.

a. For a group health plan, the review of cost-effectiveness and eligibility may be completed at the time of the health plan contract renewal date. The employer shall complete Health Insurance Premium Payment (HIPP) Program Review, Form 470-3016, for the review.

b. For individual health plans, the client shall complete HIPP Individual Policy Review, Form 470-3017, for the review.

c. Failure of the household to cooperate in the review process shall result in cancellation of premium payment and may result in Medicaid ineligibility as provided in subrule 75.21(1).

d. Redeterminations shall be completed whenever:

(1) A premium rate, deductible, or coinsurance changes,

(2) A person covered under the policy loses full Medicaid eligibility,

(3) Changes in employment or hours of employment affect the availability of health insurance,

(4) The insurance carrier changes,

(5) The policyholder leaves the Medicaid home, or

(6) There is a decrease in the services covered under the policy.

e. The policyholder shall report changes that may affect the availability or cost-effectiveness of the policy within ten calendar days from the date of the change. Changes may be reported by telephone, in writing, or in person.

f. If a change in the number of members in the Medicaid household causes the health plan not to be cost-effective, lesser health plan options, as defined in paragraph 75.21(16)*"a,"* shall be considered if available and cost-effective.

g. When employment ends, hours of employment are reduced, or some other qualifying event affecting the availability of the group health plan occurs, the department shall verify whether coverage may be continued under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985, the Family Leave Act, or other coverage continuation provisions.

(1) The Employer Verification of COBRA Eligibility, Form 470-3037, shall be used for this purpose.

(2) If cost-effective to do so, the department shall pay premiums to maintain insurance coverage for Medicaid members after the occurrence of the event which would otherwise result in termination of coverage.

75.21(12) *Time frames for determining cost-effectiveness.* The department shall determine cost-effectiveness of the health plan and notify the applicant of the decision regarding payment of the premiums within 65 calendar days from the date an application or referral (as defined in subrule 75.21(8)) is received. Additional time may be taken when, for reasons beyond the control of the department or the applicant, information needed to establish cost-effectiveness cannot be obtained within the 65-day period.

75.21(13) *Notices.*

a. An adequate notice shall be provided to the household under the following circumstances:

(1) To inform the household of the initial decision on cost-effectiveness and premium payment.

(2) To inform the household that premium payments are being discontinued because Medicaid eligibility has been lost by all persons covered under the health plan.

(3) The health plan is no longer available to the family (e.g., the employer drops insurance coverage or the policy is terminated by the insurance company).

b. The department shall provide a timely and adequate notice as defined in 441—subrule 7.7(1) to inform the household of a decision to discontinue payment of the health insurance premium because:

(1) The department has determined the health plan is no longer cost-effective, or

(2) The member has failed to cooperate in providing information necessary to establish continued eligibility for the program.

75.21(14) *Rate refund.* The department shall be entitled to any rate refund made when the health insurance carrier determines a return of premiums to the policyholder is due for any time period for which the department paid the premium.

75.21(15) *Reinstatement of eligibility.*

a. When eligibility for the HIPP program is canceled because the persons covered under the health plan lose Medicaid eligibility, HIPP eligibility shall be reinstated when Medicaid eligibility is reestablished if all other eligibility factors are met.

b. When HIPP eligibility is canceled because of the member's failure to cooperate in providing information necessary to establish continued eligibility for the HIPP program, benefits shall be reinstated the first day of the first month in which cooperation occurs, if all other eligibility factors are met.

75.21(16) *Amount of premium paid.*

a. For group health plans, the individual eligible to enroll in the plan shall provide verification of the cost of all possible health plan options (i.e., single, employee/children, family).

(1) The HIPP program shall pay only for the option that provides coverage to the Medicaid-eligible family members in the household and is determined to be cost-effective.

(2) The HIPP program shall not pay the portion of the premium cost which is the responsibility of the employer or other plan sponsor.

b. For individual health plans, the HIPP program shall pay the cost of covering the Medicaid members covered by the plan.

c. For both group and individual health plans, if another household member must be covered to obtain coverage for the Medicaid members, the HIPP program shall pay the cost of covering that household member if the coverage is cost-effective as determined pursuant to subrules 75.21(3) and 75.21(4).

75.21(17) *Reporting changes.* Failure to report and verify changes may result in cancellation of Medicaid benefits.

a. The client shall verify changes in an employer-sponsored health plan by providing a pay stub reflecting the change or a statement from the employer.

b. Changes in employment or the employment-related insurance carrier shall be verified by the employer.

c. The client shall verify changes in individual policies, such as premiums or deductibles, with a statement from the insurance carrier.

d. Any benefits paid during a period in which there was ineligibility for HIPP due to unreported changes shall be subject to recovery in accordance with the provisions of 441—Chapter 11.

e. Any underpayment that results from an unreported change shall be paid effective the first day of the month in which the change is reported.

This rule is intended to implement Iowa Code section 249A.3.

[**ARC 7935B**, IAB 7/1/09, effective 9/1/09; **ARC 8503B**, IAB 2/10/10, effective 1/13/10]

441—75.22(249A) AIDS/HIV health insurance premium payment program. For the purposes of this rule, "AIDS" and "HIV" are defined in accordance with Iowa Code section 141A.1.

75.22(1) *Conditions of eligibility.* The department shall pay for the cost of continuing health insurance coverage to persons with AIDS or HIV-related illnesses when the following criteria are met:

a. The person with AIDS or HIV-related illness shall be the policyholder, or the spouse of the policyholder, of an individual or group health plan.

b. The person shall be a resident of Iowa in accordance with the provisions of rule 441—75.10(249A).

c. The person shall not be eligible for Medicaid. The person shall be required to apply for Medicaid benefits when it appears Medicaid eligibility may exist. Persons who are required to meet a spenddown obligation under the medically needy program, as provided in subrule 75.1(35), are not considered Medicaid-eligible for the purpose of establishing eligibility under these provisions.

When Medicaid eligibility is attained, premium payments shall be made under the provisions of rule 441—75.21(249A) if all criteria of that rule are met.

d. A physician's statement shall be provided verifying the policyholder or the spouse of the policyholder suffers from AIDS or an HIV-related illness. The physician's statement shall also verify that the policyholder or the spouse of the policyholder is or will be unable to continue employment in the person's current position or that hours of employment will be significantly reduced due to AIDS or HIV-related illness. The Physician's Verification of Diagnosis, Form 470-2958, shall be used to obtain this information from the physician.

e. Gross income shall not exceed 300 percent of the federal poverty level for a family of the same size. The gross income of all family members shall be counted using the definition of gross income under the supplemental security income (SSI) program.

f. Liquid resources shall not exceed $10,000 per household. The following are examples of countable resources:

(1) Unobligated cash.

(2) Bank accounts.

(3) Stocks, bonds, certificates of deposit, excluding Internal Revenue Service defined retirement plans.

g. The health insurance plan must be cost-effective based on the amount of the premium and the services covered.

75.22(2) *Application process.*

a. *Application.* Persons applying for participation in this program shall complete the AIDS/HIV Health Insurance Premium Payment Application, Form 470-2953. The applicant shall be required to provide documentation of income and assets. The application shall be available from and may be filed at any county departmental office or at the Division of Medical Services, Department of Human Services, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114.

An application shall be considered as filed on the date an AIDS/HIV Health Insurance Premium Payment Application, Form 470-2953, containing the applicant's name, address and signature is received and date-stamped in any county departmental office or the division of medical services.

b. *Time limit for decision.* Every reasonable effort will be made to render a decision within 30 days. Additional time for rendering a decision may be taken when, due to circumstances beyond the control of the applicant or the department, a decision regarding the applicant's eligibility cannot be reached within 30 days (e.g., verification from a third party has not been received).

c. *Eligible on the day of decision.* No payments will be made for current or retroactive premiums if the person with AIDS or an HIV-related illness is deceased prior to a final eligibility determination being made on the application, if the insurance plan has lapsed, or if the person has otherwise lost coverage under the insurance plan.

d. *Waiting list.* After funds appropriated for this purpose are obligated, pending applications shall be denied by the division of medical services. A denial shall require a notice of decision to be mailed within ten calendar days following the determination that funds have been obligated. The notice shall state that the applicant meets eligibility requirements but no funds are available and that the applicant will be placed on the waiting list, or that the applicant does not meet eligibility requirements. Applicants not awarded funding who meet the eligibility requirements will be placed on a statewide waiting list according to the order in which the completed applications were filed. In the event that more than one application is received at one time, applicants shall be entered on the waiting list on the basis of the day of the month of the applicant's birthday, lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

75.22(3) *Presumed eligibility* The applicant may be presumed eligible to participate in the program for a period of two calendar months or until a decision regarding eligibility can be made, whichever is earlier. Presumed eligibility shall be granted when:

a. The application is accompanied by a completed Physician's Verification of Diagnosis, Form 470-2958.

b. The application is accompanied by a premium statement from the insurance carrier indicating the policy will lapse before an eligibility determination can be made.

c. It can be reasonably anticipated that the applicant will be determined eligible from income and resource statements on the application.

75.22(4) *Family coverage.* When the person is enrolled in a policy that provides health insurance coverage to other members of the family, only that portion of the premium required to maintain coverage for the policyholder or the policyholder's spouse with AIDS or an HIV-related illness shall be paid under this rule unless modification of the policy would result in a loss of coverage for the person with AIDS or an HIV-related illness.

75.22(5) *Method of premium payment.* Premiums shall be paid in accordance with the provisions of subrule 75.21(9).

75.22(6) *Effective date of premium payment.* Premium payments shall be effective with the month of application or the effective date of eligibility, whichever is later.

75.22(7) *Reviews.* The circumstances of persons participating in the program shall be reviewed quarterly to ensure eligibility criteria continues to be met. The AIDS/HIV Health Insurance Premium Payment Program Review, Form 470-2877, shall be completed by the recipient or someone acting on the recipient's behalf for this purpose.

75.22(8) *Termination of assistance.* Premium payments for otherwise eligible persons shall be paid under this rule until one of the following conditions is met:

a. The person becomes eligible for Medicaid. In which case, premium payments shall be paid in accordance with the provisions of rule 441—75.21(249A).

b. The insurance coverage is no longer available.

c. Maintaining the insurance plan is no longer considered the most cost-effective way to pay for medical services.

d. Funding appropriated for the program is exhausted.

e. The person with AIDS or an HIV-related illness dies.

f. The person fails to provide requested information necessary to establish continued eligibility for the program.

75.22(9) *Notices.*

a. An adequate notice as defined in 441—subrule 7.7(1) shall be provided under the following circumstances:

(1) To inform the applicant of the initial decision regarding eligibility to participate in the program.

(2) To inform the recipient that premium payments are being discontinued under these provisions because Medicaid eligibility has been attained and premium payments will be made under the provisions of rule 441—75.21(249A).

(3) To inform the recipient that premium payments are being discontinued because the policy is no longer available.

(4) To inform the recipient that premium payments are being discontinued because funding for the program is exhausted.

(5) The person with AIDS or an HIV-related illness dies.

b. A timely and adequate notice as defined in 441—subrule 7.7(1) shall be provided to the recipient informing the recipient of a decision to discontinue payment of the health insurance premium when the recipient no longer meets the eligibility requirements of the program or fails to cooperate in providing information to establish eligibility.

75.22(10) *Confidentiality.* The department shall protect the confidentiality of persons participating in the program in accordance with Iowa Code section 141A.9. When it is necessary for the department to contact a third party to obtain information in order to determine initial or ongoing eligibility, a Consent to Obtain and Release Information, Form 470-0429, shall be signed by the recipient authorizing the department to make the contact.

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

441—75.23(249A) Disposal of assets for less than fair market value after August 10, 1993. In determining Medicaid eligibility for persons described in 441—Chapters 75 and 83, a transfer of assets occurring after August 10, 1993, will affect Medicaid payment for medical services as provided in this rule.

75.23(1) *Ineligibility for services.* When an individual or spouse has transferred or disposed of assets for less than fair market value as defined in 75.23(11) on or after the look-back date specified in 75.23(2), the individual shall be ineligible for medical assistance as provided in this subrule.

a. Institutionalized individual. When an institutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date, the institutionalized individual is ineligible for medical assistance payment for nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home- and

community-based waiver services. The period of ineligibility is equal to the number of months specified in 75.23(3). The department shall determine the beginning of the period of ineligibility as follows:

(1) Transfer before February 8, 2006. When the transfer of assets was made before February 8, 2006, the period of ineligibility shall begin on the first day of the first month during which the assets were transferred, except as provided in subparagraph (3).

(2) Transfer on or after February 8, 2006. Within the limits of subparagraph (3), when the transfer of assets was made on or after February 8, 2006, the period of ineligibility shall begin on the later of:

1. The first day of the first month during which the assets were transferred; or

2. The date on which the individual is eligible for medical assistance under this chapter and would be receiving nursing facility services, a level of care in any institution equivalent to that of nursing facility services, or home- and community-based waiver services, based on an approved application for such care, but for the application of this rule.

(3) Exclusive period. The period of ineligibility due to the transfer shall not begin during any other period of ineligibility under this rule.

b. Noninstitutionalized individual. When a noninstitutionalized individual or the spouse of the individual disposed of assets for less than fair market value on or after the look-back date, the individual is ineligible for medical assistance payment for home health care services, home and community care for functionally disabled elderly individuals, personal care services, and other long-term care services. The period of ineligibility is equal to the number of months specified in 75.23(3). The department shall determine the beginning of the period of ineligibility as follows:

(1) Transfer before February 8, 2006. When the transfer of assets was made before February 8, 2006, the period of ineligibility shall begin on the first day of the first month during which the assets were transferred, except as provided in subparagraph (3).

(2) Transfer on or after February 8, 2006. Within the limits of subparagraph (3), when the transfer of assets was made on or after February 8, 2006, the period of ineligibility shall begin on the later of:

1. The first day of the first month during which the assets were transferred; or

2. The date on which the individual is eligible for medical assistance under this chapter and would be receiving home health care services, home and community care for functionally disabled elderly individuals, personal care services, or other long-term care services, based on an approved application for such care, but for the application of this rule.

(3) Exclusive period. The period of ineligibility due to the transfer shall not begin during any other period of ineligibility under this rule.

c. Client participation after period of ineligibility. Expenses incurred for long-term care services during a transfer of assets penalty period may not be deducted as medical expenses in determining client participation pursuant to subrule 75.16(2).

75.23(2) *Look-back date.*

a. Transfer before February 8, 2006. For transfers made before February 8, 2006, the look-back date is the date that is 36 months (or, in the case of payments from a trust or portion of a trust that are treated as assets disposed of by the individual, 60 months) before:

(1) The date an institutionalized individual is both an institutionalized individual and has applied for medical assistance; or

(2) The date a noninstitutionalized individual applies for medical assistance.

b. Transfer on or after February 8, 2006. For transfers made on or after February 8, 2006, the look-back date is the date that is 60 months before:

(1) The date an institutionalized individual is both an institutionalized individual and has applied for medical assistance; or

(2) The date a noninstitutionalized individual applies for medical assistance.

75.23(3) *Period of ineligibility.* The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July

1, 2009, through June 30, 2010, this average statewide cost shall be $4,598.61 per month or $151.27 per day.

75.23(4) *Reduction of period of ineligibility.* The number of months of ineligibility otherwise determined with respect to the disposal of an asset shall be reduced by the months of ineligibility applicable to the individual prior to a change in institutional status.

75.23(5) *Exceptions.* An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

a. The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child of the individual who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(3) A sibling of the individual who has an equity interest in the home and who was residing in the individual's home for a period of at least one year immediately before the individual became institutionalized.

(4) A son or daughter of the individual who was residing in the individual's home for a period of at least two years immediately before the date of institutionalization and who provided care to the individual which permitted the individual to reside at home rather than in an institution or facility.

b. The assets were transferred:

(1) To the individual's spouse or to another for the sole benefit of the individual's spouse.

(2) From the individual's spouse to another for the sole benefit of the individual's spouse.

(3) To a child of the individual who is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c or to a trust established solely for the benefit of such a child.

(4) To a trust established solely for the benefit of an individual under 65 years of age who is disabled as defined in 42 U.S.C. Section 1382c.

c. A satisfactory showing is made that:

(1) The individual intended to dispose of the assets either at fair market value, or for other valuable consideration.

(2) The assets were transferred exclusively for a purpose other than to qualify for medical assistance.

(3) All assets transferred for less than fair market value have been returned to the individual.

d. The denial of eligibility would work an undue hardship. Undue hardship shall exist only when all of the following conditions are met:

(1) Application of the transfer of asset penalty would deprive the individual of medical care such that the individual's health or life would be endangered or of food, clothing, shelter, or other necessities of life.

(2) The person who transferred the resource or the person's spouse has exhausted all means including legal remedies and consultation with an attorney to recover the resource.

(3) The person's remaining available resources (after the attribution for the community spouse) are less than the monthly statewide average cost of nursing facility services to a private pay resident, counting the value of all resources except for:

1. The home if occupied by a dependent relative or if a licensed physician verifies that the person is expected to return home.

2. Household goods.

3. A vehicle required by the client for transportation.

4. Funds for burial of $4,000 or less.

Hardship will not be found if the resource was transferred to a person who was handling the financial affairs of the client or to the spouse or children of a person handling the financial affairs of the client unless the client demonstrates that payments cannot be obtained from the funds of the person who handled the financial affairs to pay for long-term care services.

75.23(6) *Assets held in common.* In the case of an asset held by an individual in common with another person or persons in a joint tenancy, tenancy in common, or similar arrangement, the asset, or the affected portion of the asset, shall be considered to be transferred by the individual when any action is taken, either

by the individual or by any other person, that reduces or eliminates the individual's ownership or control of the asset.

75.23(7) *Transfer by spouse.* In the case of a transfer by a spouse of an individual which results in a period of ineligibility for medical assistance under the state plan for the individual, the period of ineligibility shall be apportioned between the individual and the individual's spouse if the spouse otherwise becomes eligible for medical assistance under the state plan. The remaining penalty period shall be evenly divided on a monthly basis, with any remaining month of penalty (prorated as a half month to each spouse) applied to the spouse who initiated the transfer action.

If a spouse subsequently dies prior to the end of the penalty period, the remaining penalty period shall be applied to the surviving spouse's period of ineligibility.

75.23(8) *Definitions.* In this rule the following definitions apply:

"Assets" shall include all income and resources of the individual and the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by:

1. The individual or the individual's spouse.
2. A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse.
3. Any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.

"Income" shall be defined by 42 U.S.C. Section 1382a.

"Institutionalized individual" shall mean an individual who is an inpatient in a nursing facility, who is an inpatient in a medical institution and with respect to whom payment is made based on a level of care provided in a nursing facility or who is eligible for home- and community-based waiver services.

"Resources" shall be defined by 42 U.S.C. Section 1382b without regard (in the case of an institutionalized individual) to the exclusion of the home and land appertaining thereto.

"Transfer or disposal of assets" means any transfer or assignment of any legal or equitable interest in any asset as defined above, including:

1. Giving away or selling an interest in an asset;
2. Placing an interest in an asset in a trust that is not available to the grantor (see 75.24(2)*"b"*(2));
3. Removing or eliminating an interest in a jointly owned asset in favor of other owners;
4. Disclaiming an inheritance of any property, interest, or right pursuant to Iowa Code section 633.704 on or after July 1, 2000 (see Iowa Code section 249A.3(11)*"c"*);
5. Failure to take a share of an estate as a surviving spouse (also known as "taking against a will") on or after July 1, 2000, to the extent that the value received by taking against the will would have exceeded the value of the inheritance received under the will (see Iowa Code section 249A.3(11)*"d"*); or
6. Transferring or disclaiming the right to income not yet received.

75.23(9) *Purchase of annuities.*

a. The entire amount used to purchase an annuity on or after February 8, 2006, shall be treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in subparagraphs (1) through (3) of this paragraph and also meets the condition described in subparagraph (4).

(1) The annuity is an annuity described in Subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(2) The annuity is purchased with proceeds from:

1. An account or trust described in Subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;
2. A simplified employee pension (within the meaning of Section 408(k) of the United States Internal Revenue Code of 1986); or
3. A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(3) The annuity:

1. Is irrevocable and nonassignable;

2. Is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration); and

3. Provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(4) Iowa is named as the remainder beneficiary either:

1. In the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or

2. In the second position after the community spouse or minor or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

b. Funds used to purchase an annuity for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether the conditions described in 75.23(9)*"a"* were met.

75.23(10) *Purchase of promissory notes, loans, or mortgages.*

a. Funds used to purchase a promissory note, loan, or mortgage after February 8, 2006, shall be treated as assets transferred for less than fair market value in the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance for services described in 75.23(1), unless the note, loan, or mortgage meets all of the following conditions:

(1) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(2) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(3) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

b. Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value shall be treated as assets transferred for less than fair market value regardless of whether:

(1) The note, loan, or mortgage was purchased before February 8, 2006; or

(2) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in 75.23(9)*"a"* were met.

75.23(11) *Purchase of life estates.*

a. The entire amount used to purchase a life estate in another individual's home after February 8, 2006, shall be treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one year after the date of the purchase.

b. Funds used to purchase a life estate in another individual's home for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of whether:

(1) The life estate was purchased before February 8, 2006; or

(2) The life estate was purchased on or after February 8, 2006, and the purchaser resided in the home for one year after the date of purchase.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

[**ARC 7834B**, IAB 6/3/09, effective 7/8/09; **ARC 8444B**, IAB 1/13/10, effective 3/1/10]

441—75.24(249A) Treatment of trusts established after August 10, 1993. For purposes of determining an individual's eligibility for, or the amount of, medical assistance benefits, trusts established after August 10, 1993, (except for trusts specified in 75.24(3)) shall be treated in accordance with 75.24(2).

75.24(1) *Establishment of trust.*

a. For the purposes of this rule, an individual shall be considered to have established a trust if assets of the individual were used to form all or part of the principal of the trust and if any of the following individuals established the trust other than by will: the individual, the individual's spouse, a person (including a court or administrative body, with legal authority to act in place of or on behalf of

the individual or the individual's spouse), or a person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

b. The term "assets," with respect to an individual, includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or the individual's spouse is entitled to but does not receive because of action by the individual or the individual's spouse, by a person (including a court or administrative body, with legal authority to act in place of or on behalf of the individual's spouse), or by any person (including a court or administrative body) acting at the direction or upon the request of the individual or the individual's spouse.

c. In the case of a trust, the principal of which includes assets of an individual and assets of any other person or persons, the provisions of this rule shall apply to the portion of the trust attributable to the individual.

d. This rule shall apply without regard to:

(1) The purposes for which a trust is established.

(2) Whether the trustees have or exercise any discretion under the trust.

(3) Any restrictions on when or whether distribution may be made for the trust.

(4) Any restriction on the use of distributions from the trust.

e. The term "trust" includes any legal instrument or device that is similar to a trust, including a conservatorship.

75.24(2) *Treatment of revocable and irrevocable trusts.*

a. In the case of a revocable trust:

(1) The principal of the trust shall be considered an available resource.

(2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual.

(3) Any other payments from the trust shall be considered assets disposed of by the individual, subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

b. In the case of an irrevocable trust:

(1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the principal from which, or the income on the principal from which, payment to the individual could be made shall be considered an available resource to the individual and payments from that principal or income to or for the benefit of the individual shall be considered income to the individual. Payments for any other purpose shall be considered a transfer of assets by the individual subject to the penalties described at rule 441—75.23(249A) and 441—Chapter 89.

(2) Any portion of the trust from which, or any income on the principal from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust (or, if later, the date on which payment to the individual was foreclosed) to be assets disposed of by the individual subject to the penalties specified at 75.23(3) and 441—Chapter 89. The value of the trust shall be determined for this purpose by including the amount of any payments made from this portion of the trust after this date.

75.24(3) *Exceptions.* This rule shall not apply to any of the following trusts:

a. A trust containing the assets of an individual under the age of 65 who is disabled (as defined in Section 1614(a)(3) of the Social Security Act) and which is established for the benefit of the individual by a parent, grandparent, legal guardian of the individual, or a court if the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid on behalf of the individual.

b. A trust established for the benefit of an individual if the trust is composed only of pension, social security, and other income to the individual (and accumulated income of the trust), and the state will receive all amounts remaining in the trust upon the death of the individual up to the amount equal to the total medical assistance paid on behalf of the individual.

For disposition of trust amounts pursuant to Iowa Code sections 633C.1 to 633C.5, the average statewide charges and Medicaid rates for the period from July 1, 2009, to June 30, 2010, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is $4,189 per month.

(2) and (3) Rescinded IAB 7/7/04, effective 7/1/04.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is $20,960 per month.

(5) The average statewide charge to a resident of a mental health institute is $17,758 per month.

(6) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is $5,044 per month.

(7) The average statewide charge to a home- and community-based waiver applicant or recipient shall be consistent with the level of care determination and correspond with the average charges and rates set forth in this paragraph.

c. A trust containing the assets of an individual who is disabled (as defined in 1614(a)(3) of the Social Security Act) that meets the following conditions:

(1) The trust is established and managed by a nonprofit association.

(2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(3) Accounts in the trust are established solely for the benefit of individuals who are disabled (as defined in 1614(a)(3) of the Social Security Act) by the parent, grandparent, or legal guardian of the individuals, by the individuals or by a court.

(4) To the extent that amounts remaining in the beneficiary's account upon death of the beneficiary are not retained by the trust, the trust pays to the state from the remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary.

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

[**ARC 7834B**, IAB 6/3/09, effective 7/8/09]

441—75.25(249A) Definitions. Unless otherwise specified, the definitions in this rule shall apply to 441—Chapters 75 through 85 and 88.

"Aged" shall mean a person 65 years of age or older.

"Applicant" shall mean a person who is requesting assistance, including recertification under the medically needy program, on the person's own behalf or on behalf of another person. This also includes parents living in the home with the children and the nonparental relative who is requesting assistance for the children.

"Blind" shall mean a person with central visual acuity of 20/200 or less in the better eye with use of corrective lens or visual field restriction to 20 degrees or less.

"Break in assistance" for medically needy shall mean the lapse of more than three months from the end of the medically needy certification period to the beginning of the next current certification period.

"Central office" shall mean the state administrative office of the department of human services.

"Certification period" for medically needy shall mean the period of time not to exceed two consecutive months in which a person is conditionally eligible.

"Client" shall mean all of the following:

1. A Medicaid applicant;
2. A Medicaid member;
3. A person who is conditionally eligible for Medicaid; and
4. A person whose income or assets are considered in determining eligibility for an applicant or member.

"CMAP-related medically needy" shall mean those individuals under the age of 21 who would be eligible for the child medical assistance program except for excess income or resources.

"Community spouse" shall mean a spouse of an institutionalized spouse for the purposes of rules 441—75.5(249A), 441—75.16(249A), and 441—76.10(249A).

"Conditionally eligible" shall mean that a person has completed the application process and has been assigned a medically needy certification period and spenddown amount but has not met the spenddown amount for the certification period or has been assigned a monthly premium but has not yet paid the premium for that month.

"Coverage group" shall mean a group of persons who meet certain common eligibility requirements.

"Department" shall mean the Iowa department of human services.

"Disabled" shall mean a person who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which has lasted or is expected to last for a continuous period of not less than 12 months from the date of application.

"FMAP-related medically needy" shall mean those persons who would be eligible for the family medical assistance program except for excess income or resources.

"Health insurance" shall mean protection which provides payment of benefits for covered sickness or injury.

"Incurred medical expenses" for medically needy shall mean (1) medical bills paid by a client, responsible relative, or state or political subdivision program other than Medicaid during the retroactive certification period or certification period, or (2) unpaid medical expenses for which the client or responsible relative remains obligated.

"Institutionalized person" shall mean a person who is an inpatient in a nursing facility or a Medicare-certified skilled nursing facility, who is an inpatient in a medical institution and for whom payment is made based on a level of care provided in a nursing facility, or who is a person described in 75.1(18) for the purposes of rule 441—75.5(249A).

"Institutionalized spouse" shall mean a married person living in a medical institution, or nursing facility, or home- and community-based waiver setting who is likely to remain living in these circumstances for at least 30 consecutive days, and whose spouse is not in a medical institution or nursing facility for the purposes of rules 441—75.5(249A), 441—75.16(249A), and 441—76.10(249A).

"Local office" shall mean the county office of the department of human services or the mental health institute or hospital school.

"Medically needy income level (MNIL)" shall mean 133 1/3 percent of the schedule of basic needs based on family size. (See subrule 75.58(2).)

"Member" shall mean a person who has been determined eligible for medical assistance under rule 441—75.1(249A). For the medically needy program, "member" shall mean a medically needy person who has income at or less than the medically needy income level (MNIL) or who has reduced countable income to the MNIL during the certification period through spenddown. "Member" may be used interchangeably with "recipient." This definition does not apply to the phrase "household member."

"Necessary medical and remedial services" for medically needy shall mean medical services recognized by law which are currently covered under the Iowa Medicaid program.

"Noncovered Medicaid services" for medically needy shall mean medical services that are not covered under Medicaid because the provider was not enrolled in Medicaid, the bill is for a responsible relative who is not in the Medicaid-eligible group or the bill is for services delivered before the start of a certification period.

"Nursing facility services" shall mean the level of care provided in a medical institution licensed for nursing services or skilled nursing services for the purposes of rule 441—75.23(249A).

"Obligated medical expense" for medically needy shall mean a medical expense for which the client or responsible relative continues to be legally liable.

"Ongoing eligibility" for medically needy shall mean that eligibility continues for an SSI-related, CMAP-related, or FMAP-related medically needy person with a zero spenddown.

"Pay and chase" shall mean that the state pays the total amount allowed under the agency's payment schedule and then seeks reimbursement from the liable third party. The pay and chase provision applies to Medicaid claims for prenatal care, for preventive pediatric services, and for all services provided to a person for whom there is court-ordered medical support.

"Payee" refers to an SSI payee as defined in Iowa Code subsections 633.33(7) and 633.3(20).

"Recertification" in the medically needy coverage group shall mean establishing a new certification period when the previous period has expired and there has not been a break in assistance.

"Recipient" shall mean a person who is receiving assistance including receiving assistance for another person.

"Responsible relative" for medically needy shall mean a spouse, parent, or stepparent living in the household of the client.

"Retroactive certification period" for medically needy shall mean one, two, or three calendar months prior to the date of application. The retroactive certification period begins with the first month Medicaid-covered services were received and continues to the end of the month immediately prior to the month of application.

"Retroactive period" shall mean the three calendar months immediately preceding the month in which an application is filed.

"Spenddown" shall mean the process by which a medically needy person obligates excess income for allowable medical expenses to reduce income to the appropriate MNIL.

"SSI-related" shall mean those persons whose eligibility is derived from regulations governing the supplemental security income (SSI) program except that income shall be considered prospectively.

"SSI-related medically needy" shall mean those persons whose eligibility is derived from regulations governing the supplemental security income (SSI) program except for income or resources.

"Supply" shall mean the requested information is received by the department by the specified due date.

"Transfer of assets" shall mean transfer of resources or income for less than fair market value for the purposes of rule 441—75.23(249A). For example, a transfer of resources or income could include establishing a trust, contributing to a charity, removing a name from a resource or income, or reducing ownership interest in a resource or income.

"Unborn child" shall include an unborn child during the entire term of pregnancy.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

[**ARC 7935B**, IAB 7/1/09, effective 9/1/09]

441—75.26(249A) References to the family investment program. Rescinded IAB 10/8/97, effective 12/1/97.

441—75.27(249A) AIDS/HIV settlement payments. The following payments are exempt as income and resources when determining eligibility for or the amount of Medicaid benefits under any coverage group if the payments are kept in a separate, identifiable account:

75.27(1) *Class settlement payments.* Payments made from any fund established pursuant to a class settlement in the case of Susan Walker v. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) are exempt.

75.27(2) *Other settlement payments.* Payments made pursuant to a release of all claims in a case that is entered into in lieu of the class settlement referred to in subrule 75.27(1) and that is signed by all affected parties in the cases on or before the later of December 31, 1997, or the date that is 270 days after the date on which the release is first sent to the person (or the legal representative of the person) to whom payment is to be made are exempt.

This rule is intended to implement Iowa Code sections 249A.3 and 249A.4.

441—75.28 to **75.49** Reserved.

DIVISION II
ELIGIBILITY FACTORS SPECIFIC TO COVERAGE GROUPS RELATED TO
THE FAMILY MEDICAL ASSISTANCE PROGRAM (FMAP)

441—75.50(249A) Definitions. The following definitions apply to this division in addition to the definitions in rule 441—75.25(249A).

"Applicant" shall mean a person who is requesting assistance on the person's own behalf or on behalf of another person, including recertification under the medically needy program. This also includes parents living in the home with the children and the nonparental relative who is requesting assistance for the children.

"Application period" means the months beginning with the month in which the application is considered to be filed, through and including the month in which an eligibility determination is made.

"Assistance unit" includes any person whose income is considered when determining eligibility.

"Bona fide offer" means an actual or genuine offer which includes a specific wage or a training opportunity at a specified place when used to determine whether the parent has refused an offer of training or employment.

"Central office" shall mean the state administrative office of the department of human services.

"Change in income" means a permanent change in hours worked or rate of pay, any change in the amount of unearned income, or the beginning or ending of any income.

"Change in work expenses" means a permanent change in the cost of dependent care or the beginning or ending of dependent care.

"Department" shall mean the Iowa department of human services.

"Dependent" means an individual who can be claimed by another individual as a dependent for federal income tax purposes.

"Dependent child" or *"dependent children"* means a child or children who meet the nonfinancial eligibility requirements of the applicable FMAP-related coverage group.

"Income in-kind" is any gain or benefit which is not in the form of money payable directly to the eligible group including nonmonetary benefits, such as meals, clothing, and vendor payments. Vendor payments are money payments which are paid to a third party and not to the eligible group.

"Initial two months" means the first two consecutive months for which eligibility is granted.

"Medical institution," when used in this division, shall mean a facility which is organized to provide medical care, including nursing and convalescent care, in accordance with accepted standards as authorized by state law and as evidenced by the facility's license. A medical institution may be public or private. Medical institutions include the following:

1. Hospitals.
2. Extended care facilities (skilled nursing).
3. Intermediate care facilities.
4. Mental health institutions.
5. Hospital schools.

"Needy specified relative" means a nonparental specified relative, listed in 75.55(1), who meets all the eligibility requirements of the FMAP coverage group, listed in 75.1(14).

"Nonrecurring lump sum unearned income" means a payment in the nature of a windfall, for example, an inheritance, an insurance settlement for pain and suffering, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits such as social security, job insurance or workers' compensation.

"Parent" means a legally recognized parent, including an adoptive parent, or a biological father if there is no legally recognized father.

"Prospective budgeting" means the determination of eligibility and the amount of assistance for a calendar month based on the best estimate of income and circumstances which will exist in that calendar month.

"Recipient" means a person for whom Medicaid is received as well as parents living in the home with the eligible children and other specified relatives as defined in subrule 75.55(1) who are receiving Medicaid for the children. Unless otherwise specified, a person is not a recipient for any month in which the assistance issued for that person is subject to recoupment because the person was ineligible.

"Schedule of needs" means the total needs of a group as determined by the schedule of living costs, described at subrule 75.58(2).

"Stepparent" means a person who is not the parent of the dependent child, but is the legal spouse of the dependent child's parent by ceremonial or common-law marriage.

"Unborn child" shall include an unborn child during the entire term of the pregnancy.

"Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

441—75.51(249A) Reinstatement of eligibility. Rescinded IAB 2/10/10, effective 3/1/10.

441—75.52(249A) Continuing eligibility.

75.52(1) *Reviews.* Eligibility factors shall be reviewed at least annually for the FMAP-related programs. Reviews shall be conducted using information contained in and verification supplied with the review form specified in subrule 75.52(3).

75.52(2) *Additional reviews.* A redetermination of specific eligibility factors shall be made when:

a. The member reports a change in circumstances (for example, a change in income, as defined at rule 441—75.50(249A)), or

b. A change in the member's circumstances comes to the attention of a staff member.

75.52(3) *Forms.*

a. Information for the annual review shall be submitted on Form 470-2881, 470-2881(M), 470-2881(S), or 470-2881(MS), Review/Recertification Eligibility Document (RRED), with the following exceptions:

(1) When the client has completed Form 470-0462 or 470-0466 (Spanish), Health and Financial Support Application, for another purpose, this form may be used as the review document for the annual review.

(2) Information for recertification of family medical assistance-related medically needy shall be submitted on Form 470-3118 or 470-3118(S), Medicaid Review.

b. The department shall supply the review form to the client as needed, or upon request, and shall pay the cost of postage to return the form.

(1) When the review form is issued in the department's regular end-of-month mailing, the client shall return the completed form to the department by the fifth calendar day of the following month.

(2) When the review form is not issued in the department's regular end-of-month mailing, the client shall return the completed form to the department by the seventh day after the date the form is mailed by the department.

(3) A copy of a review form received by fax or electronically shall have the same effect as an original form.

c. The review information for foster children or children in subsidized adoption or subsidized guardianship shall be submitted on Form 470-2914, Foster Care, Adoption, and Guardianship Medicaid Review.

75.52(4) *Client responsibilities.* For the purposes of this subrule, "clients" shall include persons who received assistance subject to recoupment because the persons were ineligible.

a. The client shall cooperate by giving complete and accurate information needed to establish eligibility.

b. The client shall complete the required review form when requested by the department in accordance with subrule 75.52(3). If the department does not receive a completed form, assistance shall be canceled. A completed form is one that has all items answered, is signed, is dated, and is accompanied by verification as required in paragraphs 75.57(1)*"f"* and 75.57(2)*"l."*

c. The client shall report any change in the following circumstances at the annual review or upon the addition of an individual to the eligible group:

(1) Income from all sources, including any change in care expenses.

(2) Resources.

(3) Members of the household.

(4) School attendance.

(5) A stepparent recovering from an incapacity.

(6) Change of mailing or living address.

(7) Payment of child support.

(8) Receipt of a social security number.

(9) Payment for child support, alimony, or dependents as defined in paragraph 75.57(8)*"b."*

(10) Health insurance premiums or coverage.

d. All clients shall timely report any change in the following circumstances at any time:

(1) Members of the household.

(2) Change of mailing or living address.

(3) Sources of income.

(4) Health insurance premiums or coverage.

e. Clients described at subrule 75.1(35) shall also timely report any change in income from any source and any change in care expenses at any time.

f. A report shall be considered timely when made within ten days from the date:

(1) A person enters or leaves the household.

(2) The mailing or living address changes.

(3) A source of income changes.

(4) A health insurance premium or coverage change is effective.

(5) Of any change in income.

(6) Of any change in care expenses.

g. When a change is not reported as required in paragraphs 75.52(4)*"c"* through *"e,"* any excess Medicaid paid shall be subject to recovery.

h. When a change in any circumstance is reported, its effect on eligibility shall be evaluated and eligibility shall be redetermined, if appropriate, regardless of whether the report of the change was required in paragraphs 75.52(4)*"c"* through *"e."*

75.52(5) *Effective date.* After assistance has been approved, eligibility for continuing assistance shall be effective as of the first of each month. Any change affecting eligibility reported during a month shall be effective the first day of the next calendar month, subject to timely notice requirements at rule 441—7.6(217) for any adverse actions.

a. When the change creates ineligibility, eligibility under the current coverage group shall be canceled and an automatic redetermination of eligibility shall be completed in accordance with rule 441—76.11(249A).

b. Rescinded IAB 10/4/00, effective 10/1/00.

c. When an individual included in the eligible group becomes ineligible, that individual's Medicaid shall be canceled effective the first of the next month unless the action must be delayed due to timely notice requirements at rule 441—7.6(217).

[**ARC 8260B**, IAB 11/4/09, effective 1/1/10; **ARC 8500B**, IAB 2/10/10, effective 3/1/10]

441—75.53(249A) Iowa residency policies specific to FMAP and FMAP-related coverage groups. Notwithstanding the provisions of rule 441—75.10(249A), the following rules shall apply when determining eligibility for persons under FMAP or FMAP-related coverage groups.

75.53(1) *Definition of resident.* A resident of Iowa is one:

a. Who is living in Iowa voluntarily with the intention of making that person's home there and not for a temporary purpose. A child is a resident of Iowa when living there on other than a temporary basis. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily or for a temporary purpose; or

b. Who, at the time of application, is living in Iowa, is not receiving assistance from another state, and entered Iowa with a job commitment or seeking employment in Iowa, whether or not currently employed. Under this definition the child is a resident of the state in which the specified relative is a resident.

75.53(2) *Retention of residence.* Residence is retained until abandoned. Temporary absence from Iowa, with subsequent returns to Iowa, or intent to return when the purposes of the absence have been accomplished does not interrupt continuity of residence.

75.53(3) *Suitability of home.* The home shall be deemed suitable until the court has ruled it unsuitable and, as a result of such action, the child has been removed from the home.

75.53(4) *Absence from the home.*

a. An individual who is absent from the home shall not be included in the eligible group, except as described in paragraph *"b."*

(1) A parent who is a convicted offender but is permitted to live at home while serving a court-imposed sentence by performing unpaid public work or unpaid community service during the workday is considered absent from the home.

(2) A parent whose absence from the home is due solely to a pattern of employment is not considered to be absent.

(3) A parent whose absence is occasioned solely by reason of the performance of active duty in the uniformed services of the United States is considered absent from the home. "Uniformed service" means the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanographic and Atmospheric Administration, or Public Health Service of the United States.

b. The needs of an individual who is temporarily out of the home are included in the eligible group if otherwise eligible. A temporary absence exists in the following circumstances:

(1) An individual is anticipated to be in the medical institution for less than a year, as verified by a physician's statement. Failure to return within one year from the date of entry into the medical institution will result in the individual's needs being removed from the eligible group.

(2) An individual is out of the home to secure education or training as defined for children in paragraph 75.54(1)*"b"* as long as the child remains a dependent and as defined for adults in 441—subrule 93.114(1), first sentence.

(3) An individual is out of the home for reasons other than reasons in subparagraphs (1) and (2) and intends to return to the home within three months. Failure to return within three months from the date the individual left the home will result in the individual's needs being removed from the eligible group.

441—75.54(249A) Eligibility factors specific to child.

75.54(1) *Age.* Unless otherwise specified at rule 441—75.1(249A), Medicaid shall be available to a needy child under the age of 18 years without regard to school attendance.

a. A child is eligible for the entire month in which the child's eighteenth birthday occurs, unless the birthday falls on the first day of the month.

b. Medicaid shall also be available to a needy child aged 18 years who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and who is reasonably expected to complete the program before reaching the age of 19 if the following criteria are met.

(1) A child shall be considered attending school full-time when enrolled or accepted in a full-time (as certified by the school or institute attended) elementary, secondary or the equivalent level of vocational or technical school or training leading to a certificate or diploma. Correspondence school is not an allowable program of study.

(2) A child shall also be considered to be in regular attendance in months when the child is not attending because of an official school or training program vacation, illness, convalescence, or family emergency. A child meets the definition of regular school attendance until the child has been officially dropped from the school rolls.

(3) When a child's education is temporarily interrupted pending adjustment of an education or training program, exemption shall be continued for a reasonable period of time to complete the adjustment.

75.54(2) *Residing with a relative.* The child shall be living in the home of one of the relatives specified in subrule 75.55(1). When the mother intends to place her child for adoption shortly after birth, the child shall be considered as living with the mother until the time custody is actually relinquished.

a. Living with relatives implies primarily the existence of a relationship involving an accepted responsibility on the part of the relative for the child's welfare, including the sharing of a common household.

b. Home is the family setting maintained or in the process of being established as evidenced by the assumption and continuation of responsibility for the child by the relative.

75.54(3) *Deprivation of parental care and support.* Rescinded IAB 11/1/00, effective 1/1/01.

75.54(4) *Continuous eligibility for children.* Rescinded IAB 11/5/08, effective 11/1/08.

441—75.55(249A) Eligibility factors specific to specified relatives.

75.55(1) *Specified relationship.*

a. A child may be considered as meeting the requirement of living with a specified relative if the child's home is with one of the following or with a spouse of the relative even though the marriage is terminated by death or divorce:

Father or adoptive father.

Mother or adoptive mother.

Grandfather or grandfather-in-law, meaning the subsequent husband of the child's natural grandmother, i.e., stepgrandfather or adoptive grandfather.

Grandmother or grandmother-in-law, meaning the subsequent wife of the child's natural grandfather, i.e., stepgrandmother or adoptive grandmother.

Great-grandfather or great-great-grandfather.

Great-grandmother or great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother, brother-of-half-blood, stepbrother, brother-in-law or adoptive brother.

Sister, sister-of-half-blood, stepsister, sister-in-law or adoptive sister.

Uncle or aunt, of whole or half blood.

Uncle-in-law or aunt-in-law.

Great uncle or great-great-uncle.

Great aunt or great-great-aunt.

First cousins, nephews, or nieces.

b. A relative of the putative father can qualify as a specified relative if the putative father has acknowledged paternity by the type of written evidence on which a prudent person would rely.

75.55(2) *Liability of relatives.* All appropriate steps shall be taken to secure support from legally liable persons on behalf of all persons in the eligible group, including the establishment of paternity as provided in rule 441—75.14(249A).

a. When necessary to establish eligibility, the department shall make the initial contact with the absent parent at the time of application. Subsequent contacts may be made by the child support recovery unit.

b. When contact with the family or other sources of information indicates that relatives other than parents and spouses of the eligible children are contributing toward the support of members of the eligible group, have contributed in the past, or are of such financial standing they might reasonably be expected to contribute, the department shall contact these persons to verify current contributions or arrange for contributions on a voluntary basis.

[**ARC 8785B**, IAB 6/2/10, effective 8/1/10]

441—75.56(249A) Resources.

75.56(1) *Limitation.* Unless otherwise specified, a client may have the following resources and be eligible for the family medical assistance program (FMAP) or FMAP-related programs. Any resource not specifically exempted shall be counted toward the applicable resource limit when determining eligibility for adults. All resources shall be disregarded when determining eligibility for children.

a. A homestead without regard to its value. A mobile home or similar shelter shall be considered as a homestead when it is occupied by the client. Temporary absence from the homestead with a defined purpose for the absence and with intent to return when the purpose of the absence has been accomplished shall not be considered to have altered the exempt status of the homestead. Except as described at paragraph 75.56(1)*"n"* or *"o,"* the net market value of any other real property shall be considered with personal property.

b. Household goods and personal effects without regard to their value. Personal effects are personal or intimate tangible belongings of an individual, especially those that are worn or carried on the person, which are maintained in one's home, and include clothing, books, grooming aids, jewelry, hobby equipment, and similar items.

c. Life insurance which has no cash surrender value. The owner of the life insurance policy is the individual paying the premium on the policy with the right to change the policy as the individual sees fit.

d. One motor vehicle per household. If the household includes more than one adult or working teenaged child whose resources must be considered as described in subrule 75.56(2), an equity not to exceed a value of $3,000 in one additional motor vehicle shall be disregarded for each additional adult or working teenaged child.

(1) The disregard for an additional motor vehicle shall be allowed when a working teenager is temporarily absent from work.

(2) The equity value of any additional motor vehicle in excess of $3,000 shall be counted toward the resource limit in paragraph 75.56(1)*"e."* When a motor vehicle is modified with special equipment for the handicapped, the special equipment shall not increase the value of the motor vehicle.

(3) Beginning July 1, 1994, and continuing in succeeding state fiscal years, the motor vehicle equity value to be disregarded shall be increased by the latest increase in the consumer price index for used vehicles during the previous state fiscal year.

e. A reserve of other property, real or personal, not to exceed $2,000 for applicant assistance units and $5,000 for member assistance units. EXCEPTION: Applicant assistance units that contain at least one person who was a Medicaid member in Iowa in the month before the month of application are subject to the $5,000 limit. Resources of the assistance unit shall be determined in accordance with persons considered, as described at subrule 75.56(2).

f. Money which is counted as income for the month and that part of lump-sum income defined at paragraph 75.57(9)*"c"*reserved for the current or future month's income.

g. Payments which are exempted for consideration as income and resources under subrule 75.57(6).

h. An equity not to exceed $1,500 in one funeral contract or burial trust for each member of the eligible group. Any amount in excess of $1,500 shall be counted toward resource limits unless it is established that the funeral contract or burial trust is irrevocable.

i. One burial plot for each member of the eligible group. A burial plot is defined as a conventional gravesite, crypt, mausoleum, urn, or other repository which is customarily and traditionally used for the remains of a deceased person.

j. Settlements for payment of medical expenses.

k. Life estates.

l. Federal or state earned income tax credit payments in the month of receipt and the following month, regardless of whether these payments are received with the regular paychecks or as a lump sum with the federal or state income tax refund.

m. The balance in an individual development account (IDA), including interest earned on the IDA.

n. An equity not to exceed $10,000 for tools of the trade or capital assets of self-employed households.

When the value of any resource is exempted in part, that portion of the value which exceeds the exemption shall be considered in calculating whether the eligible group's property is within the reserve defined in paragraph *"e."*

o. Nonhomestead property that produces income consistent with the property's fair market value.

75.56(2) *Persons considered.*

a. Resources of persons in the eligible group shall be considered in establishing property limits.

b. Resources of the parent who is living in the home with the eligible children but who is not eligible for Medicaid shall be considered in the same manner as if the parent were eligible for Medicaid.

c. Resources of the stepparent living in the home shall not be considered when determining eligibility of the eligible group, with one exception: The resources of a stepparent included in the eligible group shall be considered in the same manner as a parent.

d. The resources of supplemental security income (SSI) members shall not be counted in establishing property limitations. When property is owned by both the SSI beneficiary and a Medicaid member in another eligible group, each shall be considered as having a half interest in order to determine

the value of the resource, unless the terms of the deed or purchase contract clearly establish ownership on a different proportional basis.

e. The resources of a nonparental specified relative who elects to be included in the eligible group shall be considered in the same manner as a parent.

75.56(3) *Homestead defined.* The homestead consists of the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. When within a city plat, it shall not exceed ½ acre in area. When outside a city plat it shall not contain, in the aggregate, more than 40 acres. When property used as a home exceeds these limitations, the equity value of the excess property shall be determined in accordance with subrule 75.56(5).

75.56(4) *Liquidation.* When proceeds from the sale of resources or conversion of a resource to cash, together with other nonexempted resources, exceed the property limitations, the member is ineligible to receive assistance until the amount in excess of the resource limitation has been expended unless immediately used to purchase a homestead, or reduce the mortgage on a homestead.

a. Property settlements. Property settlements which are part of a legal action in a dissolution of marriage or palimony suit are considered as resources upon receipt.

b. Property sold under installment contract. Property sold under an installment contract or held as security in exchange for a price consistent with its fair market value is exempt as a resource. If the price is not consistent with the contract's fair market value, the resource value of the installment contract is the gross price for which it can be sold or discounted on the open market, less any legal debts, claims, or liens against the installment contract.

Payments from property sold under an installment contract are exempt as income as specified in paragraphs 75.57(1)*"d"* and 75.57(7)*"ag."* The portion of any payment received representing principal is considered a resource upon receipt. The interest portion of the payment is considered a resource the month following the month of receipt.

75.56(5) *Net market value defined.* Net market value is the gross price for which property or an item can currently be sold on the open market, less any legal debts, claims, or liens against the property or item.

75.56(6) *Availability.*

a. A resource must be available in order for it to be counted toward resource limitations. A resource is considered available under the following circumstances:

(1) The applicant or member owns the property in part or in full and has control over it. That is, it can be occupied, rented, leased, sold, or otherwise used or disposed of at the individual's discretion.

(2) The applicant or member has a legal interest in a liquidated sum and has the legal ability to make the sum available for support and maintenance.

b. Rescinded IAB 6/30/99, effective 9/1/99.

c. When property is owned by more than one person, unless otherwise established, it is assumed that all persons hold equal shares in the property.

d. When the applicant or member owns nonhomestead property, the property shall be considered exempt for so long as the property is publicly advertised for sale at an asking price that is consistent with its fair market value.

75.56(7) *Damage judgments and insurance settlements.*

a. Payment resulting from damage to or destruction of an exempt resource shall be considered a resource to the applicant or member the month following the month the payment was received. When the applicant or member signs a legal binding commitment no later than the month after the month the payment was received, the funds shall be considered exempt for the duration of the commitment providing the terms of the commitment are met within eight months from the date of commitment.

b. Payment resulting from damage to or destruction of a nonexempt resource shall be considered a resource in the month following the month in which payment was received.

75.56(8) *Conservatorships.*

a. Conservatorships established prior to February 9, 1994. The department shall determine whether assets from a conservatorship, except one established solely for the payment of medical expenses, are available by examining the language of the order establishing the conservatorship.

(1) Funds clearly conserved and available for care, support, or maintenance shall be considered toward resource or income limitations.

(2) When the department worker questions whether the funds in a conservatorship are available, the worker shall refer the conservatorship to the central office. When assets in the conservatorship are not clearly available, central office staff may contact the conservator and request that the funds in the conservatorship be made available for current support and maintenance. When the conservator chooses not to make the funds available, the department may petition the court to have the funds released either partially or in their entirety or as periodic income payments.

(3) Funds in a conservatorship that are not clearly available shall be considered unavailable until the conservator or court actually makes the funds available.

(4) Payments received from the conservatorship for basic or special needs are considered income.

b. Conservatorships established on or after February 9, 1994. Conservatorships established on or after February 9, 1994, shall be treated according to the provisions of paragraphs 75.24(1)*"e"* and 75.24(2)*"b."*

75.56(9) *Not considered a resource.* Inventories and supplies, exclusive of capital assets, that are required for self-employment shall not be considered a resource. Inventory is defined as all unsold items, whether raised or purchased, that are held for sale or use and shall include, but not be limited to, merchandise, grain held in storage and livestock raised for sale. Supplies are items necessary for the operation of the enterprise, such as lumber, paint, and seed. Capital assets are those assets which, if sold at a later date, could be used to claim capital gains or losses for federal income tax purposes. When self-employment is temporarily interrupted due to circumstances beyond the control of the household, such as illness, inventory or supplies retained by the household shall not be considered a resource.

441—75.57(249A) Income. When determining initial and ongoing eligibility for the family medical assistance program (FMAP) and FMAP-related Medicaid coverage groups, all unearned and earned income, unless specifically exempted, disregarded, deducted for work expenses, or diverted as defined in these rules, shall be considered. Unless otherwise specified at rule 441—75.1(249A), the determination of initial eligibility is a three-step process. Initial eligibility shall be granted only when (1) the countable gross nonexempt unearned and earned income received by the eligible group and available to meet the current month's needs is no more than 185 percent of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); (2) the countable net earned and unearned income is less than the schedule of living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 2); and (3) the countable net unearned and earned income, after applying allowable disregards, is less than the schedule of basic needs as identified at subrule 75.58(2) for the eligible group (Test 3). The determination of continuing eligibility is a two-step process. Continuing eligibility shall be granted only when (1) countable gross nonexempt income, as described for initial eligibility, does not exceed 185 percent of the living costs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 1); and (2) countable net unearned and earned income is less than the schedule of basic needs as identified in the schedule of needs at subrule 75.58(2) for the eligible group (Test 3). Child support assigned to the department in accordance with 441—subrule 41.22(7) shall be considered unearned income for the purpose of determining continuing eligibility, except as specified at paragraphs 75.57(1)*"e,"*75.57(6)*"u,"* and 75.57(7)*"o."* Expenses for care of children or disabled adults, deductions, and diversions shall be allowed when verification is provided. The department shall return all verification to the applicant or member.

75.57(1) *Unearned income.* Unearned income is any income in cash that is not gained by labor or service. When taxes are withheld from unearned income, the amount considered will be the net income after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Net unearned income shall be determined by deducting reasonable income-producing costs from the gross unearned income. Money left after this deduction shall be considered gross income available to meet the needs of the eligible group.

a. Social security income is the amount of the entitlement before withholding of a Medicare premium.

b. Financial assistance received for education or training. Rescinded IAB 2/11/98, effective 2/1/98.

c. Rescinded IAB 2/11/98, effective 2/1/98.

d. When the client sells property on contract, proceeds from the sale shall be considered exempt as income. The portion of any payment that represents principal is considered a resource upon receipt as defined in subrule 75.56(4). The interest portion of the payment is considered a resource the month following the month of receipt.

e. Support payments in cash shall be considered as unearned income in determining initial and continuing eligibility.

(1) Any nonexempt cash support payment, for a member of the eligible group, made while the application is pending shall be treated as unearned income.

(2) Support payments shall be considered as unearned income in the month in which the IV-A agency (income maintenance) is notified of the payment by the IV-D agency (child support recovery unit).

The amount of income to consider shall be the actual amount paid or the monthly entitlement, whichever is less.

(3) Support payments reported by child support recovery during a past month for which eligibility is being determined shall be used to determine eligibility for the month. Support payments anticipated to be received in future months shall be used to determine eligibility for future months. When support payments terminate in the month of decision of an FMAP-related Medicaid application, both support payments already received and support payments anticipated to be received in the month of decision shall be used to determine eligibility for that month.

(4) When the reported support payment, combined with other income, creates ineligibility under the current coverage group, an automatic redetermination of eligibility shall be conducted in accordance with the provisions of rule 441—76.11(249A). Persons receiving Medicaid under the family medical assistance program in accordance with subrule 75.1(14) may be entitled to continued coverage under the provisions of subrule 75.1(21). Eligibility may be reestablished for any month in which the countable support payment combined with other income meets the eligibility test.

f. The client shall cooperate in supplying verification of all unearned income and of any change in income, as defined at rule 441—75.50(249A).

(1) When the information is available, the department shall verify job insurance benefits by using information supplied to the department by Iowa workforce development. When the department uses this information as verification, job insurance benefits shall be considered received the second day after the date that the check was mailed by Iowa workforce development. When the second day falls on a Sunday or federal legal holiday, the time shall be extended to the next mail delivery day.

(2) When the client notifies the department that the amount of job insurance benefits used is incorrect, the client shall be allowed to verify the discrepancy. The client must report the discrepancy before the eligibility month or within ten days of the date on the Notice of Decision, Form 470-0485, 470-0485(S), 470-0486, or 470-0486(S), applicable to the eligibility month, whichever is later.

75.57(2) *Earned income.* Earned income is defined as income in the form of a salary, wages, tips, bonuses, commission earned as an employee, income from Job Corps, or profit from self-employment. Earned income from commissions, wages, tips, bonuses, Job Corps, or salary means the total gross amount irrespective of the expenses of employment. With respect to self-employment, earned income means the net profit from self-employment, defined as gross income less the allowable costs of producing the income. Income shall be considered earned income when it is produced as a result of the performance of services by an individual.

a. Each person in the assistance unit whose gross nonexempt earned income, earned as an employee or net profit from self-employment, considered in determining eligibility is entitled to one 20 percent earned income deduction of nonexempt monthly gross earnings. The deduction is intended to include work-related expenses other than child care. These expenses shall include, but are not limited to, all of the following: taxes, transportation, meals, uniforms, and other work-related expenses.

b. Each person in the assistance unit is entitled to a deduction for care expenses subject to the following limitations.

(1) Persons in the eligible group and excluded parents shall be allowed care expenses for a child or incapacitated adult in the eligible group.

(2) Stepparents as described at paragraph 75.57(8)*"b"* and self-supporting parents on underage parent cases as described at paragraph 75.57(8)*"c"* shall be allowed incapacitated adult care or child care expenses for the ineligible dependents of the stepparent or self-supporting parent.

(3) Unless both parents are in the home and one parent is physically and mentally able to provide the care, child care or care for an incapacitated adult shall be considered a work expense in the amount paid for care of each child or incapacitated adult, not to exceed $175 per month, or $200 per month for a child under the age of two, or the going rate in the community, whichever is less.

(4) If both parents are in the home, adult or child care expenses shall not be allowed when one parent is unemployed and is physically and mentally able to provide the care.

(5) The deduction is allowable only when the care covers the actual hours of the individual's employment plus a reasonable period of time for commuting; or the period of time when the individual who would normally care for the child or incapacitated adult is employed at such hours that the individual is required to sleep during the waking hours of the child or incapacitated adult, excluding any hours a child is in school.

(6) Any special needs of a physically or mentally handicapped child or adult shall be taken into consideration in determining the deduction allowed.

(7) If the amount claimed is questionable, the expense shall be verified by a receipt or a statement from the provider of care. The expense shall be allowed when paid to any person except a parent or legal guardian of the child, another member of the eligible group, or any person whose needs are met by diversion of income from any person in the eligible group.

c. Work incentive disregard. After deducting the allowable work-related expenses as defined at paragraphs 75.57(2)*"a"* and *"b"* and income diversions as defined at subrule 75.57(4), 58 percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each person whose income must be considered is disregarded in determining eligibility for the family medical assistance program (FMAP) and those FMAP-related coverage groups subject to the three-step process for determining initial eligibility as described at rule 441—75.57(249A).

(1) The work incentive disregard is not time-limited.

(2) Initial eligibility under the first two steps of the three-step process is determined without the application of the work incentive disregard as described at subparagraphs 75.57(9)*"a"*(2) and (3).

(3) A person who is not eligible for Medicaid because the person has refused to cooperate in applying for or accepting benefits from other sources, in accordance with the provisions of rule 441—75.2(249A), 441—75.3(249A), or 441—75.21(249A), is eligible for the work incentive disregard.

d. Rescinded IAB 6/30/99, effective 9/1/99.

e. A person is considered self-employed when the person:

(1) Is not required to report to the office regularly except for specific purposes such as sales training meetings, administrative meetings, or evaluation sessions.

(2) Establishes the person's own working hours, territory, and methods of work.

(3) Files quarterly reports of earnings, withholding payments, and FICA payments to the Internal Revenue Service.

f. The net profit from self-employment income in a non-home-based operation shall be determined by deducting only the following expenses that are directly related to the production of the income:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees of the self-employed.

(3) The cost of shelter in the form of rent, the interest on mortgage or contract payments; taxes; and utilities.

(4) The cost of machinery and equipment in the form of rent or the interest on mortgage or contract payments.

(5) Insurance on the real or personal property involved.

(6) The cost of any repairs needed.

(7) The cost of any travel required.

(8) Any other expense directly related to the production of income, except the purchase of capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

g. When the client is renting out apartments in the client's home, the following shall be deducted from the gross rentals received to determine the profit:

(1) Shelter expense in excess of that set forth on the chart of basic needs components at subrule 75.58(2) for the eligible group.

(2) That portion of expense for utilities furnished to tenants which exceeds the amount set forth on the chart of basic needs components at subrule 75.58(2).

(3) Ten percent of gross rentals to cover the cost of upkeep.

h. In determining profit from furnishing board, room, operating a family life home, or providing nursing care, the following amounts shall be deducted from the payments received:

(1) $41 plus an amount equivalent to the monthly maximum food assistance program benefit for a one-member household for a boarder and roomer or an individual in the home to receive nursing care, or $41 for a roomer, or an amount equivalent to the monthly maximum food assistance program benefit for a one-member household for a boarder.

(2) Ten percent of the total payment to cover the cost of upkeep for individuals receiving a room or nursing care.

i. Gross income from providing child care in the applicant's or member's own home shall include the total payments received for the service and any payment received due to the Child Nutrition Amendments of 1978 for the cost of providing meals to children.

(1) In determining profit from providing child care services in the applicant's or member's own home, 40 percent of the total gross income received shall be deducted to cover the costs of producing the income, unless the applicant or member requests to have actual expenses in excess of the 40 percent considered.

(2) When the applicant or member requests to have expenses in excess of the 40 percent considered, profit shall be determined in the same manner as specified at paragraph 75.57(2)*"j."*

j. In determining profit for a self-employed enterprise in the home other than providing room and board, renting apartments or providing child care services, the following expenses shall be deducted from the income received:

(1) The cost of inventories and supplies purchased that are required for the business, such as items for sale or consumption and raw materials.

(2) Wages, commissions, and mandated costs relating to the wages for employees.

(3) The cost of machinery and equipment in the form of rent; or the interest on mortgage or contract payment; and any insurance on such machinery equipment.

(4) Ten percent of the total gross income to cover the costs of upkeep when the work is performed in the home.

(5) Any other direct cost involved in the production of the income, except the purchase of capital equipment and payment on the principal of loans for capital equipment and payment on the principal of loans for capital assets and durable goods or any cost of depreciation.

k. Rescinded IAB 6/30/99, effective 9/1/99.

l. The applicant or member shall cooperate in supplying verification of all earned income and of any change in income, as defined at rule 441—75.50(249A). A self-employed applicant or member shall keep any records necessary to establish eligibility.

75.57(3) *Shared living arrangements.* When an applicant or member shares living arrangements with another family or person, funds combined to meet mutual obligations for shelter and other basic

needs are not income. Funds made available to the applicant or member, exclusively for the applicant's or member's needs, are considered income.

75.57(4) *Diversion of income.*

a. Nonexempt earned and unearned income of the parent shall be diverted to meet the unmet needs of the ineligible children of the parent living in the family group who meet the age and school attendance requirements specified in subrule 75.54(1). Income of the parent shall be diverted to meet the unmet needs of the ineligible children of the parent and a companion in the home only when the income and resources of the companion and the children are within family medical assistance program standards. The maximum income that shall be diverted to meet the needs of the ineligible children shall be the difference between the needs of the eligible group if the ineligible children were included and the needs of the eligible group with the ineligible children excluded, except as specified at paragraph 75.57(8)*"b."*

b. Nonexempt earned and unearned income of the parent shall be diverted to permit payment of court-ordered support to children not living with the parent when the payment is actually being made.

75.57(5) *Income of unmarried specified relatives under the age of 19.*

a. Income of the unmarried specified relative under the age of 19 when that specified relative lives with a parent who receives coverage under family medical assistance-related programs or lives with a nonparental relative or in an independent living arrangement.

(1) The income of the unmarried, underage specified relative who is also an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as that of any other child. The income for the unmarried, underage specified relative who is not an eligible child in the eligible group of the specified relative's parent shall be treated in the same manner as though the specified relative had attained majority.

(2) The income of the unmarried, underage specified relative living with a nonparental relative or in an independent living arrangement shall be treated in the same manner as though the specified relative had attained majority.

b. Income of the unmarried specified relative under the age of 19 who lives in the same home as a self-supporting parent. The income of the unmarried specified relative under the age of 19 living in the same home as a self-supporting parent shall be treated in accordance with subparagraphs (1), (2), and (3) below.

(1) When the unmarried specified relative is under the age of 18 and not a parent of the dependent child, the income of the specified relative shall be exempt.

(2) When the unmarried specified relative is under the age of 18 and a parent of the dependent child, the income of the specified relative shall be treated in the same manner as though the specified relative had attained majority. The income of the specified relative's self-supporting parents shall be treated in accordance with paragraph 75.57(8)*"c."*

(3) When the unmarried specified relative is 18 years of age, the specified relative's income shall be treated in the same manner as though the specified relative had attained majority.

75.57(6) *Exempt as income and resources.* The following shall be exempt as income and resources:

a. Food reserves from home-produced garden products, orchards, domestic animals, and the like, when used by the household for its own consumption.

b. The value of the food assistance program benefit.

c. The value of the United States Department of Agriculture donated foods (surplus commodities).

d. The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act.

e. Any benefits received under Title III-C, Nutrition Program for the Elderly, of the Older Americans Act.

f. Benefits paid to eligible households under the Low Income Home Energy Assistance Act of 1981.

g. Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and the Federal-Aid Highway Act of 1968.

h. Any judgment funds that have been or will be distributed per capita or held in trust for members of any Indian tribe. When the payment, in all or part, is converted to another type of resource, that resource is also exempt.

i. Payments to volunteers participating in the Volunteers in Service to America (VISTA) program, except that this exemption will not be applied when the director of ACTION determines that the value of all VISTA payments, adjusted to reflect the number of hours the volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938, or the minimum wage under the laws of the state where the volunteers are serving, whichever is greater.

j. Payments for supporting services or reimbursement of out-of-pocket expenses received by volunteers in any of the programs established under Titles II and III of the Domestic Volunteer Services Act.

k. Tax-exempt portions of payments made pursuant to the Alaskan Native Claims Settlement Act.

l. Experimental housing allowance program payments made under annual contribution contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1936 as amended.

m. The income of a supplemental security income recipient.

n. Income of an ineligible child.

o. Income in-kind.

p. Family support subsidy program payments.

q. Grants obtained and used under conditions that preclude their use for current living costs.

r. All earned and unearned educational funds of an undergraduate or graduate student or a person in training. Any extended social security or veterans benefits received by a parent or nonparental relative as defined at subrule 75.55(1), conditional to school attendance, shall be exempt. However, any additional amount received for the person's dependents who are in the eligible group shall be counted as nonexempt income.

s. Subsidized guardianship program payments.

t. Any income restricted by law or regulation which is paid to a representative payee living outside the home, unless the income is actually made available to the applicant or member by the representative payee.

u. The first $50 received by the eligible group which represents a current monthly support obligation or a voluntary support payment, paid by a legally responsible individual, but in no case shall the total amount exempted exceed $50 per month per eligible group.

v. Bona fide loans. Evidence of a bona fide loan may include any of the following:

(1) The loan is obtained from an institution or person engaged in the business of making loans.

(2) There is a written agreement to repay the money within a specified time.

(3) If the loan is obtained from a person not normally engaged in the business of making a loan, there is borrower's acknowledgment of obligation to repay (with or without interest), or the borrower expresses intent to repay the loan when funds become available in the future, or there is a timetable and plan for repayment.

w. Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

x. The income of a person ineligible due to receipt of state-funded foster care, IV-E foster care, or subsidized adoption assistance.

y. Payments for major disaster and emergency assistance provided under the Disaster Relief Act of 1974 as amended by Public Law 100-707, the Disaster Relief and Emergency Assistance Amendments of 1988.

z. Payments made to certain United States citizens of Japanese ancestry and resident Japanese aliens under Section 105 of Public Law 100-383, and payments made to certain eligible Aleuts under Section 206 of Public Law 100-383, entitled "Wartime Relocation of Civilians."

aa. Payments received from the Radiation Exposure Compensation Act.

ab. Deposits into an individual development account (IDA) when determining eligibility. The amount of the deposit is exempt as income and shall not be used in the 185 percent eligibility test. Deposits shall be deducted from nonexempt earned and unearned income beginning with the month

following the month in which verification that deposits have begun is received. The client shall be allowed a deduction only when the deposit is made from the client's money. The earned income deductions at paragraphs 75.57(2)*"a," "b,"* and *"c"* shall be applied to nonexempt earnings from employment or net profit from self-employment that remains after deducting the amount deposited into the account. Allowable deductions shall be applied to any nonexempt unearned income that remains after deducting the amount of the deposit. If the client has both nonexempt earned and unearned income, the amount deposited into the IDA account shall first be deducted from the client's nonexempt unearned income. Deposits shall not be deducted from earned or unearned income that is exempt.

75.57(7) *Exempt as income.* The following are exempt as income.

a. Reimbursements from a third party.

b. Reimbursement from the employer for a job-related expense.

c. The following nonrecurring lump sum payments:

(1) Income tax refund.

(2) Retroactive supplemental security income benefits.

(3) Settlements for the payment of medical expenses.

(4) Refunds of security deposits on rental property or utilities.

(5) That part of a lump sum received and expended for funeral and burial expenses.

(6) That part of a lump sum both received and expended for the repair or replacement of resources.

d. Payments received by the family for providing foster care when the family is operating a licensed foster home.

e. A small monetary nonrecurring gift, such as a Christmas, birthday or graduation gift, not to exceed $30 per person per calendar quarter.

When a monetary gift from any one source is in excess of $30, the total gift is countable as unearned income. When monetary gifts from several sources are each $30 or less, and the total of all gifts exceeds $30, only the amount in excess of $30 is countable as unearned income.

f. Federal or state earned income tax credit.

g. Supplementation from county funds, providing:

(1) The assistance does not duplicate any of the basic needs as recognized by the chart of basic needs components in accordance with subrule 75.58(2), or

(2) The assistance, if a duplication of any of the basic needs, is made on an emergency basis, not as ongoing supplementation.

h. Any payment received as a result of an urban renewal or low-cost housing project from any governmental agency.

i. A retroactive corrective family investment program (FIP) payment.

j. The training allowance issued by the division of vocational rehabilitation, department of education.

k. Payments from the PROMISE JOBS program.

l. The training allowance issued by the department for the blind.

m. Payments from passengers in a car pool.

n. Support refunded by the child support recovery unit for the first month of termination of eligibility and the family does not receive the family investment program.

o. Rescinded IAB 10/4/00, effective 10/1/00.

p. Rescinded IAB 10/4/00, effective 10/1/00.

q. Income of a nonparental relative as defined at subrule 75.55(1) except when the relative is included in the eligible group.

r. Rescinded IAB 10/4/00, effective 10/1/00.

s. Compensation in lieu of wages received by a child funded through an employment and training program of the U.S. Department of Labor.

t. Any amount for training expenses included in a payment funded through an employment and training program of the U.S. Department of Labor.

u. Earnings of a person aged 19 or younger who is a full-time student as defined at subparagraphs 75.54(1)*"b"*(1) and (2). The exemption applies through the entire month of the person's twentieth birthday.

EXCEPTION: When the twentieth birthday falls on the first day of the month, the exemption stops on the first day of that month.

v. Income attributed to an unmarried, underage parent in accordance with paragraph 75.57(8)*"c"* effective the first day of the month following the month in which the unmarried, underage parent turns age 18 or reaches majority through marriage. When the unmarried, underage parent turns 18 on the first day of a month, the income of the self-supporting parents becomes exempt as of the first day of that month.

w. Incentive payments received from participation in the adolescent pregnancy prevention programs.

x. Payments received from the comprehensive child development program, funded by the Administration for Children, Youth, and Families, provided the payments are considered complimentary assistance by federal regulation.

y. Incentive allowance payments received from the work force investment project, provided the payments are considered complimentary assistance by federal regulation.

z. Interest and dividend income.

aa. Rescinded IAB 10/4/00, effective 10/1/00.

ab. Honorarium income. All moneys paid to an eligible household in connection with the welfare reform demonstration longitudinal study or focus groups shall be exempted.

ac. Income that an individual contributes to a trust as specified at paragraph 75.24(3)*"b"* shall not be considered for purposes of determining eligibility for the family medical assistance program (FMAP) or FMAP-related Medicaid coverage groups.

ad. Benefits paid to the eligible household under the family investment program (FIP).

ae. Moneys received through the pilot self-sufficiency grants program or through the pilot diversion program.

af. Earnings from new employment of any person whose income is considered when determining eligibility during the first four calendar months of the new employment. The date the new employment or self-employment begins shall be verified before approval of the exemption. This four-month period shall be referred to as the work transition period (WTP).

(1) The exempt period starts the first day of the month in which the client receives the first pay from the new employment and continues through the next three benefit months, regardless if the job ends during the four-month period.

(2) To qualify for this disregard, the person shall not have earned more than $1,200 in the 12 calendar months prior to the month in which the new job begins, the income must be reported timely in accordance with rule 441—76.10(249A), and the new job must have started after the date the application is filed. For purposes of this policy, the $1,200 earnings limit applies to the gross amount of income without any allowance for exemptions, disregards, work deductions, diversions, or the costs of doing business used in determining net profit from any income test in rule 441—75.57(249A).

(3) If another new job or self-employment enterprise starts while a WTP is in progress, the exemption shall also be applied to earnings from the new source that are received during the original 4-month period, provided that the earnings were less than $1,200 in the 12-month period before the month the other new job or self-employment enterprise begins.

(4) An individual is allowed the 4-month exemption period only once in a 12-month period. An additional 4-month exemption shall not be granted until the month after the previous 12-month period has expired.

(5) If a person whose income is considered enters the household, the new job must start after the date the person enters the home or after the person is reported in the home, whichever is later, in order for that person to qualify for the exemption.

(6) When a person living in the home whose income is not considered subsequently becomes an assistance unit member whose income is considered, the new job must start after the date of the change that causes the person's income to be considered in order for that person to qualify for the exemption.

(7) A person who begins new employment or self-employment that is intermittent in nature may qualify for the WTP. "Intermittent" includes, but is not limited to, working for a temporary agency that places the person in different job assignments on an as-needed or on-call basis, or self-employment from providing child care for one or more families. However, a person is not considered as starting new employment or self-employment each time intermittent employment restarts or changes such as when the same temporary agency places the person in a new assignment or a child care provider acquires another child care client.

ag. Payments from property sold under an installment contract as specified in paragraphs 75.56(4)*"b"* and 75.57(1)*"d."*

ah. All census earnings received by temporary workers from the Bureau of the Census.

ai. Payments received through participation in the preparation for adult living program pursuant to 441—Chapter 187.

75.57(8) *Treatment of income in excluded parent cases, stepparent cases, and underage parent cases.*

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible children but who is not eligible for Medicaid is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the 58 percent work incentive disregard described at paragraphs 75.57(2)*"a," "b,"* and *"c,"* and diversions described at subrule 75.57(4). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group.

b. Treatment of income in stepparent cases. The income of a stepparent who is not included in the eligible group but who is living with the parent in the home of an eligible child shall be given the same consideration and treatment as that of a parent subject to the limitations of subparagraphs (1) through (10) below.

(1) The stepparent's monthly gross nonexempt earned income, earned as an employee or monthly net profit from self-employment, shall receive a 20 percent earned income deduction.

(2) The stepparent's monthly nonexempt earned income remaining after the 20 percent earned income deduction shall be allowed child care expenses for the stepparent's ineligible dependents in the home, subject to the restrictions described at subparagraphs 75.57(2)*"b"*(1) through (5).

(3) Any amounts actually paid by the stepparent to individuals not living in the home, who are claimed or could be claimed by the stepparent as dependents for federal income tax purposes, shall be deducted from nonexempt monthly earned and unearned income of the stepparent.

(4) The stepparent shall also be allowed a deduction from nonexempt monthly earned and unearned income for alimony and child support payments made to individuals not living in the home with the stepparent.

(5) Except as described at subrule 75.57(10), the nonexempt monthly earned and unearned income of the stepparent remaining after application of the deductions at subparagraphs 75.57(8)*"b"*(1) through (4) above shall be used to meet the needs of the stepparent and the stepparent's dependents living in the home, when the dependents' needs are not included in the eligible group and the stepparent claims or could claim the dependents for federal income tax purposes. These needs shall be determined in accordance with the schedule of needs for a family group of the same composition in accordance with subrule 75.58(2).

(6) The stepparent shall be allowed the 58 percent work incentive disregard from monthly earnings. The disregard shall be applied to earnings that remain after all other deductions at subparagraphs 75.57(8)*"b"*(1) through (5) have been subtracted from the earnings. However, the work incentive disregard is not allowed when determining initial eligibility as described at subparagraphs 75.57(9)*"a"*(2) and (3).

(7) The deductions described in subparagraphs (1) through (6) shall first be subtracted from earned income in the same order as they appear above.

When the stepparent has both nonexempt earned and unearned income and earnings are less than the allowable deductions, then any remaining portion of the deductions in subparagraphs (3) through (5)

shall be subtracted from unearned income. Any remaining income shall be applied as unearned income to the needs of the eligible group.

If the stepparent has earned income remaining after allowable deductions, then any nonexempt unearned income shall be added to the earnings and the resulting total counted as unearned income to the needs of the eligible group.

(8) A nonexempt, nonrecurring lump sum received by a stepparent shall be considered as income and counted in computing eligibility in the same manner as it would be treated for a parent. Any portion of the nonrecurring lump sum retained by the stepparent in the month following the month of receipt shall be considered a resource to the stepparent if that portion is not exempted according to paragraph 75.56(1)*"f."*

(9) When the income of the stepparent, not in the eligible group, is insufficient to meet the needs of the stepparent and the stepparent's dependents living in the home who are not eligible for FMAP-related Medicaid, the income of the parent may be diverted to meet the unmet needs of the children of the current marriage except as described at subrule 75.57(10).

(10) When the needs of the stepparent, living in the home, are not included in the eligible group, the eligible group and any children of the parent living in the home who are not eligible for FMAP-related Medicaid shall be considered as one unit, and the stepparent and the stepparent's dependents, other than the spouse, shall be considered a separate unit.

(11) Rescinded IAB 6/30/99, effective 9/1/99.

c. Treatment of income in underage parent cases. In the case of a dependent child whose unmarried parent is under the age of 18 and living in the same home as the unmarried, underage parent's own self-supporting parents, the income of each self-supporting parent shall be considered available to the eligible group after appropriate deductions unless the provisions of rule 441—75.59(249A) apply. The deductions to be applied are the same as are applied to the income of a stepparent pursuant to subparagraphs 75.57(8)*"b"*(1) through (7). Child care expenses at subparagraph 75.57(8)*"b"*(2) shall be allowed for the self-supporting parent's ineligible children. Nonrecurring lump sum income received by the self-supporting parent(s) shall be treated in accordance with subparagraph 75.57(8)*"b"*(8).

When the self-supporting spouse of a self-supporting parent is also living in the home, the income of that spouse shall be attributable to the self-supporting parent in the same manner as the income of a stepparent is determined pursuant to subparagraphs 75.57(8)*"b"*(1) through (7) unless the provisions of rule 441—75.59(249A) apply. Child care expenses at subparagraph 75.57(8)*"b"*(2) shall be allowed for the ineligible dependents of the self-supporting spouse who is a stepparent of the minor parent. Nonrecurring lump sum income received by the spouse of the self-supporting parent shall be treated in accordance with subparagraph 75.57(8)*"b"*(8). The self-supporting parent and any ineligible dependents of that person shall be considered as one unit. The self-supporting spouse and the spouse's ineligible dependents, other than the self-supporting parent, shall be considered a separate unit.

75.57(9) *Budgeting process.*

a. Initial and ongoing eligibility. Both initial and ongoing eligibility shall be based on a projection of income based on the best estimate of future income.

(1) Upon application, the department shall use all earned and unearned income received by the eligible group to project future income. Allowable work expenses shall be deducted from earned income, except in determining eligibility under the 185 percent test defined at rule 441—75.57(249A). The determination of initial eligibility is a three-step process as described at rule 441—75.57(249A).

(2) Test 1. When countable gross nonexempt earned and unearned income exceeds 185 percent of the schedule of living costs (Test 1), as identified at subrule 75.58(2) for the eligible group, eligibility does not exist under any coverage group for which these income tests apply. Countable gross income means nonexempt gross income, as defined at rule 441—75.57(249A), without application of any disregards, deductions, or diversions.

(3) Test 2. When the countable gross nonexempt earned and unearned income equals or is less than 185 percent of the schedule of living costs for the eligible group, initial eligibility under the schedule of living costs (Test 2) shall then be determined. Initial eligibility under the schedule of living costs is determined without application of the 58 percent work incentive disregard as specified

at paragraph 75.57(2)*"c."* All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the schedule of living costs (Test 2) for the eligible group. When countable net earned and unearned income equals or exceeds the schedule of living costs for the eligible group, eligibility does not exist under any coverage group for which these income tests apply.

(4) Test 3. After application of Tests 1 and 2 for initial eligibility or of Test 1 for ongoing eligibility, the 58 percent work incentive disregard at paragraph 75.57(2)*"c"* shall be applied when there is eligibility for this disregard. When countable net earned and unearned income, after application of the work incentive disregard and all other appropriate exemptions, deductions, and diversions, equals or exceeds the schedule of basic needs (Test 3) for the eligible group, eligibility does not exist under any coverage group for which these tests apply. When the countable net income is less than the schedule of basic needs for the eligible group, the eligible group meets FMAP or CMAP income requirements.

(5) Rescinded IAB 10/4/00, effective 10/1/00.

(6) When income received weekly or biweekly (once every two weeks) is projected for future months, it shall be projected by adding all income received in the time period being used and dividing the result by the number of instances of income received in that time period. The result shall be multiplied by four if the income is received weekly, or by two if the income is received biweekly, regardless of the number of weekly or biweekly payments to be made in future months.

(7) Rescinded IAB 7/4/07, effective 8/1/07.

(8) When a change in circumstances that is required to be timely reported by the client pursuant to paragraphs 75.52(4)*"d"* and *"e"* is not reported as required, eligibility shall be redetermined beginning with the month following the month in which the change occurred. When a change in circumstances that is required to be reported by the client at annual review or upon the addition of an individual to the eligible group pursuant to paragraph 75.52(4)*"c"* is not reported as required, eligibility shall be redetermined beginning with the month following the month in which the change was required to be reported. All other changes shall be acted upon when they are reported or otherwise become known to the department, allowing for a ten-day notice of adverse action, if required.

b. Recurring lump-sum income. Recurring lump-sum earned and unearned income, except for the income of the self-employed, shall be prorated over the number of months for which the income was received and applied to the eligibility determination for the same number of months.

(1) Income received by an individual employed under a contract shall be prorated over the period of the contract.

(2) Income received at periodic intervals or intermittently shall be prorated over the period covered by the income and applied to the eligibility determination for the same number of months. EXCEPTION: Periodic or intermittent income from self-employment shall be treated as described at paragraph 75.57(9)*"i."*

(3) When the lump-sum income is earned income, appropriate disregards, deductions and diversions shall be applied to the monthly prorated income. Income is prorated when a recurring lump sum is received at any time.

c. Nonrecurring lump-sum income. Moneys received as a nonrecurring lump sum, except as specified in subrules 75.56(4) and 75.56(7) and at paragraphs 75.57(8)*"b"* and *"c,"* shall be treated in accordance with this rule. Nonrecurring lump-sum income includes an inheritance, an insurance settlement or tort recovery, an insurance death benefit, a gift, lottery winnings, or a retroactive payment of benefits, such as social security, job insurance, or workers' compensation.

(1) Nonrecurring lump-sum income shall be considered as income in the month of receipt and counted in computing eligibility, unless the income is exempt.

(2) When countable income exclusive of any family investment program grant but including countable lump-sum income exceeds the needs of the eligible group under their current coverage group, the countable lump-sum income shall be prorated. The number of full months for which a monthly amount of the lump sum shall be counted as income in the eligibility determination is derived by dividing the total of the lump-sum income and any other countable income received in or projected to be received in the month the lump sum was received by the schedule of living costs, as identified at subrule 75.58(2), for the eligible group. This period is referred to as the period of proration. Any

income remaining after this calculation shall be applied as income to the first month following the period of proration and disregarded as income thereafter.

(3) The period of proration shall begin with the month when the nonrecurring lump sum was received, whether or not the receipt of the lump sum was timely reported. If receipt of the lump sum was reported timely and the calculation was completed timely, no recoupment shall be made. If receipt of the lump sum was not reported timely or the calculation was not completed timely, recoupment shall begin with the month of receipt of the nonrecurring lump sum.

(4) The period of proration shall be shortened when:

1. The schedule of living costs as defined at subrule 75.58(2) increases; or

2. A portion of the lump sum is no longer available to the eligible group due to loss or theft or because the person controlling the lump sum no longer resides with the eligible group and the lump sum is no longer available to the eligible group; or

3. There is an expenditure of the lump sum made for the following circumstances unless there was insurance available to meet the expense: Payments made on medical services for the former eligible group or their dependents for services listed in 441—Chapters 78, 81, 82, and 85 at the time the expense is reported to the department; the cost of necessary repairs to maintain habitability of the homestead requiring the spending of over $25 per incident; cost of replacement of exempt resources as defined in subrule 75.56(1) due to fire, tornado, or other natural disaster; or funeral and burial expenses. The expenditure of these funds shall be verified.

(5) When countable income, including the lump-sum income, is less than the needs of the eligible group in accordance with the provisions of their current coverage group, the lump sum shall be counted as income for the month of receipt.

(6) For purposes of applying the lump-sum provision, the eligible group is defined as all eligible persons and any other individual whose lump-sum income is counted in determining the period of proration.

(7) During the period of proration, individuals not in the eligible group when the lump-sum income was received may be eligible as a separate eligible group. Income of this eligible group plus income of the parent or other legally responsible person in the home, excluding the lump-sum income already considered, shall be considered as available in determining eligibility.

d. The third digit to the right of the decimal point in any calculation of income, hours of employment and work expenses for care, as defined at paragraph 75.57(2)*"b,"* shall be dropped.

e. In any month for which an individual is determined eligible to be added to a currently active family medical assistance (FMAP) or FMAP-related Medicaid case, the individual's needs, income, and resources shall be included. An individual who is a member of the eligible group and who is determined to be ineligible for Medicaid shall be canceled prospectively effective the first of the following month if the timely notice of adverse action requirements as provided at 441—subrule 76.4(1) can be met.

f. Rescinded IAB 10/4/00, effective 10/1/00.

g. Rescinded IAB 2/11/98, effective 2/1/98.

h. Income from self-employment received on a regular weekly, biweekly, semimonthly or monthly basis shall be budgeted in the same manner as the earnings of an employee. The countable income shall be the net income.

i. Income from self-employment not received on a regular weekly, biweekly, semimonthly or monthly basis that represents an individual's annual income shall be averaged over a 12-month period of time, even if the income is received within a short period of time during that 12-month period. Any change in self-employment shall be handled in accordance with subparagraphs (3) through (5) below.

(1) When a self-employment enterprise which does not produce a regular weekly, biweekly, semimonthly or monthly income has been in existence for less than a year, income shall be averaged over the period of time the enterprise has been in existence and the monthly amount projected for the same period of time. If the enterprise has been in existence for such a short time that there is very little income information, the worker shall establish, with the cooperation of the client, a reasonable estimate which shall be considered accurate and projected for three months, after which the income

shall be averaged and projected for the same period of time. Any changes in self-employment shall be considered in accordance with subparagraphs (3) through (5) below.

(2) These policies apply when the self-employment income is received before the month of decision and the income is expected to continue, in the month of decision, after assistance is approved.

(3) A change in the cost of producing self-employment income is defined as an established permanent ongoing change in the operating expenses of a self-employment enterprise. Change in self-employment income is defined as a change in the nature of business.

(4) When a change in operating expenses occurs, the department shall recalculate the expenses on the basis of the change.

(5) When a change occurs in the nature of the business, the income and expenses shall be computed on the basis of the change.

75.57(10) *Restriction on diversion of income.* Rescinded IAB 7/11/01, effective 9/1/01.

75.57(11) *Divesting of income.* Assistance shall not be approved when an investigation proves that income was divested and the action was deliberate and for the primary purpose of qualifying for assistance or increasing the amount of assistance paid.

[**ARC 8500B**, IAB 2/10/10, effective 3/1/10; **ARC 8556B**, IAB 3/10/10, effective 2/10/10]

441—75.58(249A) Need standards.

75.58(1) *Definition of eligible group.* The eligible group consists of all eligible persons specified below and living together, except when one or more of these persons have elected to receive supplemental security income under Title XVI of the Social Security Act or are voluntarily excluded in accordance with the provisions of rule 441—75.59(249A). There shall be at least one child, which may be an unborn child, in the eligible group except when the only eligible child is receiving supplemental security income.

a. The following persons shall be included (except as otherwise provided in these rules) without regard to the person's employment status, income or resources:

(1) All dependent children who are siblings of whole or half blood or adoptive.

(2) Any parent of such children, if the parent is living in the same home as the dependent children.

b. The following persons may be included:

(1) The needy specified relative who assumes the role of parent.

(2) The needy specified relative who acts as caretaker when the parent is in the home but is unable to act as caretaker.

(3) An incapacitated stepparent, upon request, when the stepparent is the legal spouse of the parent by ceremonial or common-law marriage and the stepparent does not have a child in the eligible group.

1. A stepparent is considered incapacitated when a clearly identifiable physical or mental defect has a demonstrable effect upon earning capacity or the performance of the homemaking duties required to maintain a home for the stepchild. The incapacity shall be expected to last for a period of at least 30 days from the date of application.

2. The determination of incapacity shall be supported by medical or psychological evidence. The evidence may be submitted either by letter from the physician or on Form 470-0447, Report on Incapacity.

3. When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on Form 470-0502, Authorization for Examination and Claim for Payment.

4. A finding of eligibility for social security benefits or supplemental security income benefits based on disability or blindness is acceptable proof of incapacity for the family medical assistance program (FMAP) and FMAP-related program purposes.

5. A stepparent who is considered incapacitated and is receiving Medicaid shall be referred to the department of education, division of vocational rehabilitation services, for evaluation and services. Acceptance of these services is optional.

(4) The stepparent who is not incapacitated when the stepparent is the legal spouse of the parent by ceremonial or common-law marriage and the stepparent is required in the home to care for the dependent

children. These services must be required to the extent that if the stepparent were not available, it would be necessary to allow for care as a deduction from earned income of the parent.

75.58(2) *Schedule of needs.* The schedule of living costs represents 100 percent of the basic needs. The schedule of living costs is used to determine the needs of individuals when these needs must be determined in accordance with the schedule of needs defined at rule 441—75.50(249A). The 185 percent schedule is included for the determination of eligibility in accordance with rule 441—75.57(249A). The schedule of basic needs is used to determine the basic needs of those persons whose needs are included in the eligible group. The eligible group is considered a separate and distinct group without regard to the presence in the home of other persons, regardless of relationship to or whether they have a liability to support members of the eligible group. The schedule of basic needs is also used to determine the needs of persons not included in the eligible group. The percentage of basic needs paid to one or more persons as compared to the schedule of living costs is shown on the chart below:

SCHEDULE OF NEEDS

Number of Persons	1	2	3	4	5	6	7	8	9	10	Each Additional Person
Test 1 185% of Living Costs	675.25	1330.15	1570.65	1824.10	2020.20	2249.60	2469.75	2695.45	2915.60	3189.40	320.05
Test 2 Schedule of Living Costs	365	719	849	986	1092	1216	1335	1457	1576	1724	173
Test 3 Schedule of Basic Needs	183	361	426	495	548	610	670	731	791	865	87
Ratio of Basic Needs to Living Costs	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18	50.18

CHART OF BASIC NEEDS COMPONENTS

(all figures are on a per person basis)

Number of Persons	1	2	3	4	5	6	7	8	9	10 or More
Shelter	77.14	65.81	47.10	35.20	31.74	26.28	25.69	22.52	20.91	20.58
Utilities	19.29	16.45	11.77	8.80	7.93	6.57	6.42	5.63	5.23	5.14
Household Supplies	4.27	5.33	4.01	3.75	3.36	3.26	3.10	3.08	2.97	2.92
Food	34.49	44.98	40.31	39.11	36.65	37.04	34.00	33.53	32.87	32.36
Clothing	11.17	11.49	8.70	8.75	6.82	6.84	6.54	6.39	6.20	6.10
Pers. Care & Supplies	3.29	3.64	2.68	2.38	2.02	1.91	1.82	1.72	1.67	1.64
Med. Chest Supplies	.99	1.40	1.34	1.13	1.15	1.11	1.08	1.06	1.09	1.08
Communications	7.23	6.17	3.85	3.25	2.50	2.07	1.82	1.66	1.51	1.49
Transportation	25.13	25.23	22.24	21.38	17.43	16.59	15.24	15.79	15.44	15.19

a. The definitions of the basic need components are as follows:

(1) Shelter: Rental, taxes, upkeep, insurance, amortization.

(2) Utilities: Fuel, water, lights, water heating, refrigeration, garbage.

(3) Household supplies and replacements: Essentials associated with housekeeping and meal preparation.

(4) Food: Including school lunches.

(5) Clothing: Including layette, laundry, dry cleaning.

(6) Personal care and supplies: Including regular school supplies.

(7) Medicine chest items.

(8) Communications: Telephone, newspapers, magazines.

(9) Transportation: Including bus fares.

b. Special situations in determining eligible group:

(1) The needs of a child or children in a nonparental home shall be considered a separate eligible group when the relative is receiving Medicaid for the relative's own children.

(2) When the unmarried specified relative under the age of 19 is living in the same home with a parent or parents who receive Medicaid, the needs of the specified relative, when eligible, shall be included in the same eligible group with the parents. When the specified relative is a parent, the needs of the eligible children for whom the unmarried parent is caretaker shall be included in the same eligible group. When the specified relative is a nonparental relative, the needs of the eligible children for whom the specified relative is caretaker shall be considered a separate eligible group.

When the unmarried specified relative under the age of 19 is living in the same home as a parent who receives Medicaid but the specified relative is not an eligible child, need of the specified relative shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative under the age of 19 is living with a nonparental relative or in an independent living arrangement, need shall be determined in the same manner as though the specified relative had attained majority.

When the unmarried specified relative is under the age of 18 and living in the same home with a parent who does not receive Medicaid, the needs of the specified relative, when eligible, shall be included in the eligible group with the children when the specified relative is a parent. When the specified relative is a nonparental relative as defined at subrule 75.55(1), only the needs of the eligible children shall be included in the eligible group. When the unmarried specified relative is aged 18, need shall be determined in the same manner as though the specified relative had attained majority.

(3) When a person who would ordinarily be in the eligible group has elected to receive supplemental security income benefits, the person, income and resources shall not be considered in determining eligibility for the rest of the family.

(4) When two individuals, married to each other, are living in a common household and the children of each of them are recipients of Medicaid, the eligibility shall be computed on the basis of their comprising one eligible group.

(5) When a child is ineligible for Medicaid, the income and resources of that child are not used in determining eligibility of the eligible group and the ineligible child is not a part of the household size. However, the income and resources of a parent who is ineligible for Medicaid are used in determining eligibility of the eligible group and the ineligible parent is counted when determining household size.

441—75.59(249A) Persons who may be voluntarily excluded from the eligible group when determining eligibility for the family medical assistance program (FMAP) and FMAP-related coverage groups.

75.59(1) *Exclusions from the eligible group.* In determining eligibility under the family medical assistance program (FMAP) or any FMAP-related Medicaid coverage group in this chapter, the following persons may be excluded from the eligible group when determining Medicaid eligibility of other household members.

a. Siblings (of whole or half blood, or adoptive) of eligible children.

b. Self-supporting parents of minor unmarried parents.

c. Stepparents of eligible children.

d. Children living with a specified relative, as listed at subrule 75.55(1).

75.59(2) *Needs, income, and resource exclusions.* The needs, income, and resources of persons who are voluntarily excluded shall also be excluded. If a self-supporting parent of a minor unmarried parent is voluntarily excluded, then the minor unmarried parent shall not be counted in the household size when determining eligibility for the minor unmarried parent's child. However, the income and resources of the minor unmarried parent shall be used in determining eligibility for the unmarried minor parent's child. If a stepparent is voluntarily excluded, the natural or adoptive parent shall not be counted in the household size when determining eligibility for the natural or adoptive parent's children. However, the income and resources of the natural or adoptive parent shall be used in determining eligibility for the natural or adoptive parent's children.

75.59(3) *Medicaid entitlement.* Persons whose needs are voluntarily excluded from the eligibility determination shall not be entitled to Medicaid under this or any other coverage group.

75.59(4) *Situations where parent's needs are excluded.* In situations where the parent's needs are excluded but the parent's income and resources are considered in the eligibility determination (e.g., minor unmarried parent living with self-supporting parents), the excluded parent shall be allowed the earned income deduction, child care expenses and the work incentive disregard as provided at paragraphs 75.57(2)*"a," "b,"* and *"c."*

75.59(5) *Situations where child's needs, income, and resources are excluded.* In situations where the child's needs, income, and resources are excluded from the eligibility determination pursuant to subrule 75.59(1), and the child's income is not sufficient to meet the child's needs, the parent shall be allowed to divert income to meet the unmet needs of the excluded child. The maximum amount to be diverted shall be the difference between the schedule of basic needs of the eligible group with the child included and the schedule of basic needs with the child excluded, in accordance with the provisions of subrule 75.58(2), minus any countable income of the child.

441—75.60(249A) Pending SSI approval. When a person who would ordinarily be in the eligible group has applied for supplemental security income benefits, the person's needs may be included in the eligible group pending approval of supplemental security income.

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

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CHAPTER 76
APPLICATION AND INVESTIGATION

[Ch 76, 1973 IDR, renumbered as Ch 911]
[Prior to 7/1/83, Social Services[770] Ch 76]
[Prior to 2/11/87, Human Services[498]]

441—76.1(249A) Application. Each person wishing to do so shall have the opportunity to apply for assistance without delay.

76.1(1) *Application forms.* The applicant shall immediately be given an application form to complete. When the applicant requests that the form be mailed, the department shall send the necessary form in the next outgoing mail.

a. An application for family medical assistance-related Medicaid programs shall be submitted on the Health and Financial Support Application, Form 470-0462 or Form 470-0466 (Spanish); the Health Services Application, Form 470-2927 or Form 470-2927(S); the HAWK-I Application, Comm. 156; or the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016. However, no application form is required for express lane eligibility under subrule 76.1(8), based on a determination of eligibility for food assistance.

b. An application for SSI-related Medicaid shall be submitted on the Health Services Application, Form 470-2927 or Form 470-2927(S), or the Health and Financial Support Application, Form 470-0462 or Form 470-0466 (Spanish).

c. A person who is a recipient of Supplemental Security Income (SSI) benefits shall not be required to complete a separate Medicaid application. If the department does not have all information necessary to establish that an SSI recipient meets all Medicaid eligibility requirements, the SSI recipient may be required to complete Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS), SSI Medicaid Information, and may be required to attend an interview to clarify information on this form.

d. An application for Medicaid for persons in foster care shall be submitted on Form 470-2927 or Form 470-2927(S), Health Services Application.

e. The department shall initiate a medical assistance application for a person whose application data is received from the federal Social Security Administration pursuant to 42 U.S.C. 1320b-14(c)(3).

(1) The Social Security Administration transmits data from Form SSA 1020B-OCR-SM, Application for Extra Help with Medicare Prescription Drug Plan Costs, to the department. The date that the Social Security Administration transmits its application data to the department shall be treated as the date of application for medical assistance.

(2) The department shall mail Form 470-4846, Medicare Savings Programs Additional Information Request, to the person whose data was transmitted to gather the rest of the information needed to determine eligibility.

f. An application for presumptive eligibility for children shall be submitted on Form 470-4855 or 470-4855(S), Application: Presumptive Health Care Coverage for Children.

76.1(2) *Place of filing.* An application may be filed over the Internet or in any local office of the department or in any disproportionate share hospital, federally qualified health center or other facility in which outstationing activities are provided. The hospital, health center, or facility shall forward the application to the department office responsible for completing the eligibility determination.

a. The Health Services Application, Form 470-2927 or Form 470-2927(S), may also be filed at the office of a qualified provider of presumptive Medicaid eligibility, a WIC office, a maternal health clinic, or a well child clinic. The office or clinic shall forward the application within two working days to the department office responsible for completing the eligibility determination.

b. The HAWK-I Application, Comm. 156, and the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016, shall be filed with the third-party administrator as provided at 441—subrule 86.3(3). If it appears that the family is Medicaid-eligible, the third-party administrator shall forward the application to the department office responsible for determining Medicaid eligibility.

c. Those persons eligible for supplemental security income and those who would be eligible if living outside a medical institution may make application at the social security district office.

d. Women applying for medical assistance for family planning services under 441—subrule 75.1(41) or 441—Chapter 87 may also apply at any family planning agency as defined in rule 441—87.1(82GA,ch1187).

e. Persons applying for presumptive eligibility for children shall submit the application to a qualified entity as described under 441—subrule 75.1(44).

76.1(3) *Date and method of filing application.* An application is considered filed on the date an identifiable application, Form 470-0462, 470-0466 (Spanish), 470-2927, or 470-2927(S), is received and date-stamped in any place of filing specified in subrule 76.1(2).

a. When an application is delivered to a closed office, it will be considered received on the first day that is not a weekend or state holiday following the day that the office was last open.

b. An identifiable application, Form 470-2927 or 470-2927(S), which is filed to apply for FMAP or FMAP-related Medicaid at a WIC office, well child health clinic, maternal health clinic, or the office of a qualified provider for presumptive eligibility, shall be considered filed on the date received and date-stamped in one of these offices.

c. When a HAWK-I Application, Comm. 156, or HAWK-I Electronic Application Summary and Signature Page, Form 470-4016, is filed with the third-party administrator and subsequently referred to the department for a Medicaid eligibility determination, the date the application is received and date-stamped by the third-party administrator shall be the filing date.

d. A copy of an application received by fax or electronically at one of the places described above shall have the same effect as an original application.

e. An identifiable application is an application containing a legible name, address, and signature.

f. If an authorized representative signed the application on behalf of an applicant, the signature of the applicant or the responsible person must be on the application before the application can be approved. For FMAP and FMAP-related Medicaid, the signature of a parent or stepparent in the home must be on the application before the application can be approved.

76.1(4) *Applicant cooperation.* An applicant must cooperate with the department in the application process, which may include providing information or verification, attending a scheduled face-to-face interview, or signing documents. Failure to cooperate in the application process shall serve as a basis for rejection of an application.

76.1(5) *Application not required.* For family medical assistance-related programs, a new application is not required when an eligible person is added to an existing Medicaid eligible group or when a responsible relative becomes a member of a Medicaid eligible household. This person is considered to be included in the application that established the existing eligible group. However, in these instances the date of application to add a person is the date the change is reported. When it is reported that a person is anticipated to enter the home, the date of application to add the person shall be no earlier than the date of entry or the date of report, whichever is later.

a. In those instances where a person previously ineligible for Medicaid for failure to cooperate in obtaining medical support or establishing paternity as described at 441—subrule 75.14(2) is to be granted Medicaid benefits, the person shall be granted Medicaid benefits effective the first of the month in which the person becomes eligible by cooperating in obtaining medical support or establishing paternity.

b. In those instances where a person previously ineligible for Medicaid for failure to provide a social security number or proof of application for a social security number as described at rule 441—75.7(249A) is to be granted Medicaid benefits, the person shall be granted Medicaid benefits effective the first of the month in which the person becomes eligible by providing a social security number or proof of application for a social security number.

c. In those instances where a person who has been voluntarily excluded from the eligible group in accordance with the provisions of rule 441—75.59(249A) is being added to the eligible group, the person shall be added effective the first of the month after the month in which the household requests that the person no longer be voluntarily excluded.

76.1(6) *Right to withdraw the application.* After an application has been filed, the applicant may withdraw the application at any time before the eligibility determination. The applicant may request that the application be withdrawn entirely or may, before the date the application is processed, request

withdrawal for any month covered by the application process except as provided in the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Requests for voluntary withdrawal of the application shall be documented in the case record and a Notice of Decision, Form 470-0485, 470-0486, 470-0486(S), or 470-0490, shall be sent to the applicant confirming the request.

76.1(7) *Responsible persons and authorized representatives.*

a. Responsible person. If the applicant or member is unable to act on the applicant's or member's behalf because the applicant or member is incompetent, physically incapacitated, or deceased, a responsible person may act responsibly for the applicant or member. The responsible person shall be a family member, friend or other person who has knowledge of the applicant's or member's financial affairs and circumstances and a personal interest in the applicant's or member's welfare or a legal representative such as a conservator, guardian, executor or someone with power of attorney. The responsible person shall assume the applicant's or member's position and responsibilities during the application process or for ongoing eligibility. The responsible person may designate an authorized representative as provided for in paragraph 76.1(7)*"b"* to represent the incompetent, physically incapacitated, or deceased applicant's or member's position and responsibilities during the application process or for ongoing eligibility. This authorization does not relieve the responsible person from assuming the incompetent, physically incapacitated, or deceased applicant's or member's position and responsibilities during the application process or for ongoing eligibility.

(1) When there is no person as described above to act on the incompetent, physically incapacitated, or deceased applicant's or member's behalf, any individual or organization shall be allowed to act as the responsible person if the individual or organization conducts a diligent search and completes Form 470-3356, Inability to Find a Responsible Person, attesting to the inability to find a responsible person to act on behalf of the incompetent, physically incapacitated, or deceased applicant or member.

(2) The department may require verification of incompetence or death and the person's relationship to the applicant or member or the legal representative status.

(3) Copies of all department correspondence that would normally be provided to the applicant or member shall be provided to the responsible person and the representative if one has been authorized by the responsible person.

b. Authorized representative. A competent applicant or member or a responsible person as described in paragraph 76.1(7)*"a"* may authorize any individual or organization to represent the applicant or member in the application process or for ongoing eligibility.

(1) The authorization must be in writing, and signed and dated by the applicant or member or a responsible person before the department shall recognize the authorized representative.

(2) If the authorization indicates the time period or dates of medical services it is to cover, this stated period or dates of medical services shall be honored and may include subsequent applications, if necessary, that relate to the time period or dates of medical services indicated on the authorization. If the authorization does not indicate the time period or dates of medical services it is to cover, the authorization shall be valid for any applications filed within 120 days from the date the authorization was signed and all subsequent actions pertaining to the applications filed within the 120-day period.

(3) Anytime an applicant or member or a responsible person notifies the department in writing that the applicant or member or a responsible person no longer wants an authorized representative to act on the applicant's or member's behalf, the department shall no longer recognize that person or organization as the applicant's or member's representative.

(4) Designation of an authorized representative does not relieve a competent applicant or member or a responsible person as defined in 76.1(7)*"a"* of the primary responsibility to cooperate with the department in the determination of initial and ongoing eligibility, which may include providing information or verification, attending a scheduled face-to-face interview, or signing documents on which the authorized representative's signature would be inadequate.

(5) Copies of all departmental correspondence shall be provided to the client and the representative if one has been authorized by the applicant or member.

76.1(8) *Express lane eligibility.* For purposes of an initial determination of medical assistance eligibility, the department will use express lane procedures as allowed by 42 U.S.C. § 1396a(e)(13) and as described in this subrule.

a. The department shall rely on a determination of eligibility for food assistance pursuant to 441—Chapter 65 as establishing that a child under the age of 19 meets all eligibility requirements established in 441—subrule 75.1(28) except for citizenship or alienage requirements, unless:

(1) The child's household already includes other persons receiving FMAP-related Medicaid, or

(2) The child was previously granted express lane eligibility and the household has not had at least a two-month break in food assistance eligibility since that time, or

(3) The household's income as calculated by the food assistance program exceeds the income limit for the mothers and children coverage group found at 441—subparagraph 75.1(28)*"a"*(1).

b. To obtain express lane eligibility, the child's household must request medical assistance for the child on Form 470-4851, Express Lane Medicaid for Children. The department will mail Form 470-4851 to the household when a child eligible for the express lane option is approved for food assistance pursuant to 441—Chapter 65. An adult member of the child's household or a child receiving food assistance as head of household must sign Form 470-4851 and return it to the department within 30 calendar days of issuance.

c. As a condition of express lane eligibility, the child must meet citizenship or alienage requirements of rule 441—75.11(249A).

d. The month of application for express lane eligibility is the month of the child's food assistance effective date. Express lane eligibility begins on the first day of the month of the child's food assistance effective date.

e. Retroactive eligibility is available for any of the three months before the effective date of the child's express lane eligibility when the child:

(1) Has medical bills for covered services that were received in that period, and

(2) Would have been eligible for medical assistance benefits in the month services were received if application for medical assistance had been made in that month, determined without regard to food assistance eligibility.

f. After the initial express lane determination of medical assistance eligibility, all redeterminations of medical assistance eligibility shall be made without reliance on any food assistance eligibility determination.

[**ARC 7544B**, IAB 2/11/09, effective 1/14/09; **ARC 8260B**, IAB 11/4/09, effective 1/1/10; **ARC 8439B**, IAB 1/13/10, effective 3/1/10; **ARC 8642B**, IAB 4/7/10, effective 6/1/10]

441—76.2(249A) Information and verification procedure. The decision with respect to eligibility shall be based primarily on information and verification furnished by the applicant or member. Signing a general authorization for release of information to the department does not meet this responsibility.

76.2(1) *Interviews.*

a. In processing applications for Medicaid for adults, the department may require a face-to-face or telephone interview upon written notice to the applicant. An interview is not required as a condition of eligibility for children.

b. For SSI-related Medicaid for adults, the department may require a face-to-face or telephone interview at the time of review.

c. The department shall notify the applicant in writing of the date, time and method of an interview. This notice shall be provided to the applicant personally or by mail or facsimile. Interviews that are rescheduled at the request of the applicant or authorized representative may be agreed upon verbally; a written confirmation is not required.

d. Failure of the applicant or member to attend a scheduled interview shall serve as a basis for rejection of an application or cancellation of assistance for adults. Failure of the applicant or member to attend an interview shall not serve as a basis for rejection of an application or cancellation of assistance for children.

76.2(2) *Choice of coverage groups.* An applicant who meets the eligibility requirements of more than one coverage group shall be given the choice of coverage group under which eligibility shall be determined.

76.2(3) *Conditional benefits granted previous to October 1, 1993.* When the client is receiving Medicaid under the conditional benefit policy of the SSI program pursuant to subrule 75.13(2), the client shall be required to describe the efforts that are made to sell the property on Form 470-2908, Description of Efforts to Sell Property, as requested by the department. The department shall request that the form be completed no more often than specified. For personal property being sold Form 470-2908 shall be completed no more often than every 30 days during the conditional benefit period. For real property being sold Form 470-2908 shall be completed beginning 35 days after conditional benefits are granted and no more often than every 60 days thereafter for nine months. If eligibility continues and the real property is not sold, the form shall be completed no more often than every 90 days.

76.2(4) *Providing additional information.* The department shall notify the applicant in writing of additional information or verification that is required to establish eligibility. This notice shall be provided to the applicant or member personally or by mail or facsimile.

a. The department shall allow the applicant five working days to supply the information or verification requested. Applicants for whom eligibility is determined in whole or in part by the Social Security Administration shall make application to the Social Security Administration within five working days of referral by the department.

b. The department may extend the deadline for a reasonable period of time when the applicant is making every effort but is unable to secure the required information or verification from a third party.

c. The application shall be denied or assistance shall be canceled if the department does not receive one of the following by the due date:

(1) The information or verification,

(2) An authorization to obtain the information or verification, or

(3) A request for an extension of the due date.

d. If benefits are denied for failure to provide information and the information is provided within 14 calendar days of the effective date of the denial, the department shall complete the eligibility determination as though the information were received timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant shall have until the next business day to provide the information.

76.2(5) *Reporting of changes.* The applicant shall report any change as defined at 441—paragraph 75.52(4)*"c"* which occurs during the application process within five working days of the change. Changes that occur after approval for benefits shall be reported in accordance with paragraph 75.52(4)*"c."*

[**ARC 7740B**, IAB 5/6/09, effective 6/10/09; **ARC 8500B**, IAB 2/10/10, effective 3/1/10]

441—76.3(249A) Time limit for decision. Applications shall be investigated by the county department of human services. A determination of approval, conditional eligibility, or denial shall be made as soon as possible, but no later than 30 days following the date of filing the application unless one or more of the following conditions exist.

76.3(1) The application is being processed for eligibility under the medically needy coverage group as defined in 441—subrule 75.1(35). Applicants for medically needy shall receive a written notice of approval, conditional eligibility, or denial as soon as possible, but no later than 45 days from the date the application was filed.

76.3(2) An application on the client's behalf for supplemental security income benefits is pending.

76.3(3) The application is pending due to completion of the requirement in 441—subrule 75.1(7).

76.3(4) The application is pending due to nonreceipt of information which is beyond the control of the applicant or department. It is the responsibility of the applicant to provide information to the department timely or to ask for an extension of time before the due date when additional time is needed to secure the information or verification.

76.3(5) The application is pending due to the disability determination process performed through the department.

76.3(6) Unusual circumstances exist which prevent a decision from being made within the specified time limit. Unusual circumstances include those situations where the department and the applicant have made every reasonable effort to secure necessary information which has not been supplied by the date the time limit has expired or because of emergency situations such as fire, flood, or other conditions beyond the administrative control of the department.

76.3(7) The application for retroactive Medicaid benefits is pending due to completion of the requirement in 441—subrule 75.11(2).

[**ARC 8786B**, IAB 6/2/10, effective 6/1/10]

441—76.4(249A) Notification of decision. The applicant or member will be notified in writing of the decision of the department regarding the applicant's or member's eligibility for Medicaid. If the applicant or member has been determined to be ineligible an explanation of the reason will be provided.

76.4(1) The member shall be given a timely and adequate written notice as provided in 441—subrule 7.7(1) when any decision or action is being taken by the department which adversely affects Medicaid eligibility or the amount of benefits.

76.4(2) Timely notice may be dispensed with but adequate notice shall be sent, no later than the effective date of action, when one or more of the conditions in 441—subrule 7.7(2) are met.

76.4(3) A written notice of decision shall be issued to the applicant the next working day following a determination of eligibility, conditional eligibility or ineligibility.

441—76.5(249A) Effective date.

76.5(1) *Three-month retroactive eligibility.*

a. Medical assistance benefits shall be available for all or any of the three months preceding the month in which the application is filed to persons who meet both of the following conditions:

(1) Have medical bills for covered services which were received during the three-month retroactive period.

(2) Would have been eligible for medical assistance benefits in the month services were received, if application for medical assistance had been made in that month.

b. The applicant need not be eligible in the month of application to be eligible in any of the three months prior to the month of application.

c. Retroactive medical assistance benefits shall be made available when an application has been made on behalf of a deceased person if the conditions in paragraph *"a"* are met.

d. Persons receiving only Supplemental Security Income benefits who wish to make application for Medicaid benefits for three months preceding the month of application shall complete Form 470-0364, 470-0364(S), 470-0364(M), or 470-0364(MS), SSI Medicaid Information.

e. Rescinded IAB 10/8/97, effective 12/1/97.

76.5(2) *First day of month.*

a. For persons approved for the family medical assistance-related programs, medical assistance benefits shall be effective on the first day of a month when eligibility was established anytime during the month.

b. For persons approved for supplemental security income, programs related to supplemental security income, or state supplementary assistance, medical assistance benefits shall be effective on the first day of a month when the individual was resource eligible as of the first moment of the first day of the month and met all other eligibility criteria at any time during the month.

c. When a request is made to add a new person to the eligible group, and that person meets the eligibility requirements, assistance shall be effective the first of the month in which the request was made.

d. When a request is made to add a person to the eligible group who previously was excluded, in accordance with the provisions of rule 441—75.59(249A), assistance shall be effective no earlier than the first of the month following the month in which the request was made.

76.5(3) *Care prior to approval.* No payment shall be made for medical care received prior to the effective date of approval.

76.5(4) *Reinstatement.*

a. Eligibility for medical assistance may be reinstated without a new application when all information necessary to establish eligibility, including verification of any changes, is provided within 14 calendar days of the effective date of the cancellation. If the fourteenth calendar day falls on a weekend or state holiday, the client shall have until the next business day to provide the information.

b. When medical assistance has been canceled for failure to return a completed review form as required by subrule 75.52(3), assistance may be reinstated without a new application if the department receives the completed form within 14 calendar days of the effective date of cancellation. If the fourteenth calendar day falls on a weekend or state holiday, the client shall have until the next business day to provide the information.

[**ARC 8500B**, IAB 2/10/10, effective 3/1/10; **ARC 8642B**, IAB 4/7/10, effective 6/1/10]

441—76.6(249A) Certification for services. The department of human services shall issue a Medical Assistance Eligibility Card, Form 470-1911, to persons who have been determined to be eligible for the benefits provided under the Medicaid program unless one of the following situations exists:

76.6(1) *Pregnant woman.* The eligible person is a pregnant woman determined presumptively eligible in accordance with 441—subrule 75.1(30). These persons shall be issued a Presumptive Medicaid Eligibility Notice of Decision, Form 470-2580 or 470-2580(S), by the provider.

76.6(2) *IowaCare.* A person who is enrolled in the IowaCare program shall be issued an IowaCare Medical Card, Form 470-4164.

76.6(3) *Breast and cervical cancer.* The eligible person is one who has been determined presumptively eligible for treatment of breast or cervical cancer or a precancerous condition in accordance with 441—paragraph 75.1(40)*"c."* These persons shall be issued a Presumptive Medicaid Eligibility Notice of Decision, Form 470-2580 or 470-2580(S), by the provider.

441—76.7(249A) Reinvestigation. Reinvestigation shall be made as often as circumstances indicate but in no instance shall the period of time between reinvestigations exceed 12 months.

76.7(1) The member shall supply, insofar as the member is able, additional information needed to establish eligibility within ten working days from the date a written request is issued.

a. The member shall give written permission for the release of information when the member is unable to furnish information needed to establish eligibility.

b. Failure to supply the information or verification requested or refusal to request assistance and authorize the department to secure the requested information from other sources shall serve as a basis for cancellation of Medicaid. Signing a general authorization for release of information to the department does not meet this responsibility.

76.7(2) Eligibility criteria for persons whose eligibility for Medicaid is related to the family medical assistance program shall be reviewed according to policies found in rule 441—75.52(249A).

76.7(3) Persons whose eligibility for Medicaid is related to supplemental security income shall complete Form 470-3118 or 470-3118(S), Medicaid Review, as part of the reinvestigation process when requested to do so by the department.

76.7(4) The review for foster children or children in subsidized adoption or subsidized guardianship shall be completed on Form 470-2914, Foster Care, Adoption, and Guardianship Medicaid Review, according to the schedule of the family medical assistance program or supplemental security income program for disabled children, as applicable.

76.7(5) Women eligible for family planning services only shall complete Form 470-4071, Family Planning Medicaid Review, as part of the reinvestigation process. Form 470-4071 shall be issued at least 30 days before the end of the eligibility period. The woman must submit the completed review form before the end of the eligibility period to any location specified in paragraph 76.1(2)*"d."* Women who fail to submit Form 470-4071 before the end of the eligibility period must reapply as directed in rule 441—76.1(249A).

[**ARC 7740B**, IAB 5/6/09, effective 6/10/09; **ARC 8260B**, IAB 11/4/09, effective 1/1/10; **ARC 8500B**, IAB 2/10/10, effective 3/1/10]

441—76.8(249A) Investigation by quality control or the department of inspections and appeals. The client shall cooperate with the department when the client's case is selected by quality control or the department of inspections and appeals for verification of eligibility unless the investigation revolves solely around the circumstances of a person whose income and resources do not affect medical assistance eligibility. (See department of inspections and appeals rules in 481—Chapter 72.) Failure to do so shall serve as a basis for cancellation of assistance unless the Medicaid eligibility is determined by the Social Security Administration. Once a person's eligibility is denied or canceled for failure to cooperate, the person may reapply but shall not be determined eligible until cooperation occurs.

441—76.9(249A) Member lock-in. In order to promote high quality health care and to prevent harmful practices such as duplication of medical services, drug abuse or overuse, and possible drug interactions, recipients that utilize medical assistance services or items at a frequency or in an amount which is considered to be overuse of services as defined in subrule 76.9(7) may be restricted (locked-in) to receive services from a designated provider(s).

76.9(1) A lock-in or restriction shall be imposed for a minimum of 24 months with longer restrictions determined on an individual basis.

76.9(2) Provider selection. The member may select the provider(s) from which services will be received. The designated providers will be identified on the department's eligibility verification system (ELVS). Only prescriptions written or approved by the designated primary physician(s) will be reimbursed. Other providers of the restricted service will be reimbursed only under circumstances specified in subrule 76.9(3).

76.9(3) Payment will be made to provider(s) other than the designated (lock-in) provider(s) in the following instances:

a. Emergency care is required and the designated provider is not available. Emergency care is defined as care necessary to sustain life or prevent a condition which could cause physical disability.

b. The designated provider requires consultation with another provider. Reimbursement shall be made for office visits only. Prescriptions will be reimbursed only if written or approved by the primary physician(s). Referred physicians may be added to the designation as explained in subrule 76.9(5).

c. The designated provider refers the recipient to another provider. Reimbursement shall be made for office visits only. Prescriptions will be reimbursed only if written or approved by the primary physician(s). Referred physicians may be added to the designation as explained in subrule 76.9(5).

76.9(4) When the recipient fails to choose a provider(s) within 30 days of the request, the division of medical services will select the provider(s) based on previously utilized provider(s) and reasonable access for the recipient.

76.9(5) Recipients may change designated provider(s) when a change is warranted, such as when the recipient has moved, the provider no longer participates, or the provider refuses to see the patient. The worker for the recipient shall make the determination when the recipient has demonstrated that a change is warranted. Recipients may add additional providers to the original designation with approval of a health professional employed by the department for this purpose.

76.9(6) When lock-in is imposed on a recipient, timely and adequate notice shall be sent and an opportunity for a hearing given in accordance with 441—Chapter 7.

76.9(7) Overuse of services is defined as receipt of treatments, drugs, medical supplies or other Medicaid benefits from one or multiple providers of service in an amount, duration, or scope in excess of that which would reasonably be expected to result in a medical or health benefit to the patient.

a. Determination of overuse of service shall be based on utilization data generated by the Surveillance and Utilization Review Subsystem of the Medicaid Management Information System. The system employs an exception reporting technique to identify the recipients most likely to be program overutilizers by reporting cases in which the utilization exceeds the statistical average.

b. In addition to referrals from the Surveillance and Utilization Review Subsystem described in paragraph *"a,"* referrals for utilization review shall be made when utilization data generated by the Medicaid Management Information System reflects that utilization of Medicaid recipient outpatient visits to physicians, advanced registered nurse practitioners, federally qualified health centers, rural health

centers, other clinics, and emergency rooms exceeds 24 visits in any 12-month period. This utilization review shall not apply to Medicaid recipients who are enrolled in the MediPASS program or a health maintenance organization, or who are children under 21 years of age or residents of a nursing facility. For the purposes of this paragraph, the term "physician" does not include a psychiatrist.

c. An investigation process of Medicaid recipients determined in paragraphs *"a"* or *"b"* to be subject to a review of overutilization shall be conducted to determine if actual overutilization exists by verifying that the information reported by the computer system is valid and is also unusual based on professional medical judgment. Medical judgments shall be made by physicians, pharmacists, nurses and other health professionals either employed by, under contract to, or consultants for the department. These medical judgments shall be made by the health professionals on the basis of the body of knowledge each has acquired which meets the standards necessary for licensure or certification under the Iowa licensing statutes for the particular health discipline.

441—76.10(249A) Client responsibilities.

76.10(1) In coverage groups for which Medicaid eligibility is determined using income and resource policies related to the supplemental security income (SSI) program, clients shall timely report any changes in the following circumstances to the department. EXCEPTION: Persons actually receiving SSI benefits are exempted from these reporting requirements unless they have a trust or are applying for or receiving home- and community-based waiver services.

a. Income from all sources.

b. Resources.

c. Membership of the household.

d. Recovery from disability.

e. Mailing or living address.

f. Health insurance premiums or coverage.

g. Medicare premiums or coverage.

h. Receipt of social security number.

i. Gross income of the community spouse or dependent children, parents or siblings of the institutionalized or community spouse living with a community spouse when a diversion is made to the community spouse or family. (See definitions in rule 441—75.25(249A).)

j. Income and resources of parents and spouses when income and resources are used in determining Medicaid eligibility, client participation or spenddown.

k. Residence in a medical institution for other than respite care for more than 15 days for home and community-based recipients.

76.10(2) In coverage groups for which Medicaid eligibility is determined using the family medical assistance program (FMAP) income and resource policies, clients shall report changes in accordance with 441—paragraphs 75.52(4)*"c"* through *"e."* After assistance has been approved, changes occurring during the month are effective the first day of the next calendar month, provided the notification requirements at rule 441—76.4(249A) can be met.

76.10(3) A report shall be considered timely when received by the department:

a. Within ten days from the date the change is known to the member or authorized representative; or

b. Within five days from the date the change is known to the applicant or authorized representative.

76.10(4) When a change is not timely reported, any incorrect program expenditures shall be subject to recovery from the client.

76.10(5) Effective date of change. When a request is made to add a new person to the eligible group, and that person meets the eligibility requirements, assistance shall be effective the first day of the month in which the request was made unless otherwise specified at rule 441—76.5(249A). After assistance has been approved, changes reported during the month shall be effective the first day of the next calendar month, unless:

a. Timely notice of adverse action is required as specified in 441—subrule 7.7(1).

b. The certification has expired for persons receiving assistance under the medically needy program in accordance with the provisions of 441—subrule 75.1(35).

c. Rescinded IAB 10/31/01, effective 1/1/02.

441—76.11(249A) Automatic redetermination. Whenever a Medicaid member no longer meets the eligibility requirements of the current coverage group, an automatic redetermination of eligibility for other Medicaid coverage groups shall be made. If the reason for ineligibility under the initial coverage group pertained to a condition of eligibility which applies to all coverage groups, such as failure to cooperate, no further redetermination shall be required. When the redetermination is completed, the member shall be notified of the decision in writing. The redetermination process shall be completed as follows:

76.11(1) *Information received by the tenth of the month.* If information that creates ineligibility under the current coverage group is received in the department by the tenth of the month, the redetermination process shall be completed by the end of that month unless the provisions of subrule 76.11(3) apply. The effective date of cancellation for the current coverage group shall be the first day of the month following the month the information is received.

76.11(2) *Information received after the tenth of the month.* If information that creates ineligibility under the current coverage group is received in the department after the tenth of the month, the redetermination process shall be completed by the end of the following month unless the provisions of subrule 76.11(3) apply. The effective date of cancellation for the current coverage group shall be the first day of the second month following the month the information is received.

76.11(3) *Change in federal law.* If a change in federal law affects the eligibility of large numbers of Medicaid members and the Secretary of Health and Human Services has extended the redetermination time limits, in accordance with 42 CFR Sec. 435.1003 as amended to January 13, 1997, the redetermination process shall be completed within the extended time limit and the effective date of cancellation for the current coverage group shall be no later than the first day of the month following the month in which the extended time limit expires.

76.11(4) *Referral for HAWK-I program.* When the only coverage group under which a child will qualify for Medicaid is the medically needy program with a spenddown as provided in 441—subrule 75.1(35), a referral to the Hawk-I program shall be made in accordance with 441—subrule 86.4(4) as part of the automatic redetermination process when it appears the child is otherwise eligible.

441—76.12(249A) Recovery.

76.12(1) *Definitions.*

"Administrative overpayment" means medical assistance incorrectly paid to or for the client because of continuing assistance during the appeal process or allowing a deduction for the Medicare part B premium in determining client participation while the department arranges to pay the Medicare premium directly.

"Agency error" means medical assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the department.
6. Failure to make prompt revisions in medical payment following changes in policies requiring the changes as of a specific date.

"Client" means a current or former Medicaid member.

"Client error" means medical assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or written, regarding the client's income, resources, or other eligibility and benefit factors. It also means

assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.10(249A).

"Department" means the department of human services.

76.12(2) *Amount subject to recovery.* The department shall recover from a client all Medicaid funds incorrectly expended to or on behalf of the client. The incorrect expenditures may result from client or agency error, or administrative overpayment.

76.12(3) *Notification.* All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery; and the reason for the incorrect expenditure.

76.12(4) *Source of recovery.* Recovery shall be made from the client or from parents of children under age 21 when the parents completed the application and had responsibility for reporting changes. Recovery may come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

76.12(5) *Repayment.* The repayment of incorrectly expended Medicaid funds shall be made to the department.

However, repayment of funds incorrectly paid to a nursing facility, a Medicare-certified skilled nursing facility, a psychiatric medical institution for children, an intermediate care facility for the mentally retarded, or mental health institute enrolled as an inpatient psychiatric facility may be made by the client to the facility. The department shall then recover the funds from the facility through a vendor adjustment.

76.12(6) *Appeals.* The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

76.12(7) *Estate recovery.* Medical assistance is subject to recovery from the estate of a Medicaid member, the estate of the member's surviving spouse, or the estate of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for Medicare cost sharing or for benefits described in Section 1902(a)(10)(E) of the Social Security Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2)*"d."* The classification of the debt is defined at Iowa Code section 633.425(7).

a. Definition of estate. For the purpose of this subrule, the "estate" of a Medicaid member, a surviving spouse, or a surviving child shall include all real property, personal property, or any other asset in which the member, spouse, or surviving child had any legal title or interest at the time of death, or at the time a child reaches the age of 21, to the extent of that interest. An estate includes, but is not limited to, interest in jointly held property, retained life estates, and interests in trusts.

b. Debt due for member 55 years of age or older. Receipt of medical assistance when a member is 55 years of age or older creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1, 1994.

c. Debt due for member under the age of 55 in a medical institution.

(1) Receipt of medical assistance creates a debt due to the department from the member's estate upon the member's death for all medical assistance provided on the member's behalf on or after July 1,1994, when the member:

1. Is under the age of 55; and

2. Is a resident of a nursing facility, an intermediate care facility for the mentally retarded, or a mental health institute; and

3. Cannot reasonably be expected to be discharged and return home.

(2) If the member is discharged from the facility and returns home before staying six consecutive months, no debt will be assessed for medical assistance payments made on the member's behalf for the time in the institution.

(3) If the member remains in the facility for six consecutive months or longer or dies before staying six consecutive months, the department shall presume that the member cannot or could not reasonably

be expected to be discharged and return home and a debt due shall be established. The department shall notify the member of the presumption and the establishment of a debt due.

d. Request for a determination of ability to return home. Upon receipt of a notice of the establishment of a debt due based on the presumption that the member cannot return home, the member or someone acting on the member's behalf may request that the department determine whether the member can or could reasonably have been expected to return home.

(1) When a written request is made within 30 days of the notice that a debt due will be established, no debt due shall be established until the department has made a decision on the member's ability to return home. If the determination is that there is or was no ability to return home, a debt due shall be established for all medical assistance as of the date of entry into the institution.

(2) When a written request is made more than 30 days after the notice that a debt due will be established, a debt due will be established for medical assistance provided before the request even if the determination is that the member can or could have returned home.

e. Determination of ability to return home. When the member or someone acting on the member's behalf requests that the department determine if the member can or could have returned home, the determination shall be made by the Iowa Medicaid enterprise (IME) medical services unit.

(1) The IME medical services unit cannot make a determination until the member has been in an institution at least six months or after the death of the member, whichever is earlier. The IME medical services unit will notify the member or the member's representative and the department of the determination.

(2) If the determination is that the member can or could return home, the IME medical services unit shall establish the date the return is expected or could have been expected to occur.

(3) If the determination is that the member cannot or could not return home, a debt due will be established unless the member or the member's representative asks for a reconsideration of the decision. The IME medical services unit will notify the member or the member's representative and the department of the reconsideration decision.

(4) If the reconsideration decision is that the member cannot or could not return home, a debt due will be established against the member unless the decision is appealed pursuant to 441—Chapter 7. The appeal decision will determine the final outcome for the establishment of a debt due and the period when the debt is established.

f. Debt collection.

(1) A nursing facility participating in the medical assistance program shall notify the IME revenue collection unit upon the death of a member residing in the facility by submitting Form 470-4331, Estate Recovery Program Nursing Home Referral.

(2) Upon receipt of Form 470-4331 or a report of a member's death through other means, the IME revenue collection unit will use Form 470-4339, Medical Assistance Debt Response, to request a statement of the member's assets from the member's personal representative. The representative shall sign and return Form 470-4339 indicating whether assets remain and, if so, what the assets are and what higher priority expenses exist. EXCEPTION: The procedures in this subparagraph are not necessary when a probate estate has been opened, because probate procedures provide for an inventory, an accounting, and a final report of the estate.

g. Waiving the collection of the debt.

(1) The department shall waive the collection of the debt created under this subrule from the estate of the member to the extent that collection of the debt would result in either of the following:

1. Reduction in the amount received from the member's estate by a surviving spouse or by a surviving child who is under the age of 21, blind, or permanently and totally disabled at the time of the member's death.

2. Creation of an undue hardship for the person seeking a waiver of estate recovery. Undue hardship exists when total household income is less than 200 percent of the poverty level for a household of the same size, total household resources do not exceed $10,000, and application of estate recovery would result in deprivation of food, clothing, shelter, or medical care such that life or health would be

endangered. For this purpose, "income" and "resources" shall be defined as under the family medical assistance program.

(2) To apply for a waiver of estate recovery due to undue hardship, the person shall provide a written statement and supporting verification to the department within 30 days of the notice of estate recovery pursuant to Iowa Code section 633.425.

(3) The department shall determine whether undue hardship exists on a case-by-case basis. Appeals of adverse decisions regarding an undue hardship determination may be filed in accordance with 441—Chapter 7.

h. *Amount waived.* If collection of all or part of a debt is waived pursuant to paragraph *"g,"* to the extent that the person received the member's estate, the amount waived shall be a debt due from the following:

(1) The estate of the member's surviving spouse, upon the death of the spouse.

(2) The estate of the member's surviving child who is blind or has a disability, upon the death of the child.

(3) A surviving child who was under 21 years of age at the time of the member's death, when the child reaches the age of 21.

(4) The estate of a surviving child who was under 21 years of age at the time of the member's death, if the child dies before reaching the age of 21.

(5) The hardship waiver recipient, when the hardship no longer exists.

(6) The estate of the recipient of the undue hardship waiver, at the time of death of the hardship waiver recipient.

i. *Impact of asset disregard on debt due.* The estate of a member who is eligible for medical assistance under 441—subrule 75.5(5) shall not be subject to a claim for medical assistance paid on the member's behalf up to the amount of the assets disregarded by asset disregard. Medical assistance paid on behalf of the member before these conditions shall be recovered from the estate, regardless of the member's having purchased precertified or approved insurance.

j. *Interest on debt.* Interest shall accrue on a debt due under this subrule at the rate provided pursuant to Iowa Code section 535.3, beginning six months after the death of a Medicaid member, the surviving spouse, or the surviving child, or upon the child's reaching the age of 21.

k. *Reimbursement to county.* If a county reimburses the department for medical assistance provided under this subrule and the amount of medical assistance is subsequently repaid through a medical assistance income trust or a medical assistance special needs trust as defined in Iowa Code Supplement chapter 633C, the department shall reimburse the county on a proportionate basis.

[**ARC 8343B**, IAB 12/2/09, effective 1/6/10]

441—76.13(249A) Health care data match program. As a condition of doing business in Iowa, health insurers shall provide, upon the request of the state, information with respect to individuals who are eligible for or are provided medical assistance under the state's medical assistance state plan to determine (1) during what period the individual or the individual's spouse or dependents may be or may have been covered by a health insurer and (2) the nature of the coverage that is or was provided by the health insurer. This requirement applies to self-insured plans, group health plans as defined in the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406), service benefit plans, managed care organizations, pharmacy benefits managers, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

76.13(1) *Agreement required.* The parties shall sign a data use agreement for the purposes of this rule. The agreement shall prescribe the manner in which information shall be provided to the department of human services and the acceptable uses of the information provided.

a. The initial provision of data shall include the data necessary to enable the department to match covered persons and identify third-party payers for the two-year period before the initial provision of the data. The data shall include the name, address, and identifying number of the plan.

b. Ongoing monthly matches may be limited to changes in the data previously provided, including additional covered persons, with the effective dates of the changes.

76.13(2) *Agreement form.*

a. An agreement with the department shall be in substantially the same form as Form 470-4415, Agreement for Use of Data.

b. An agreement with the department's designee shall be in a form approved by the designee, which shall include privacy protections equivalent to those provided in Form 470-4415, Agreement for Use of Data.

76.13(3) *Confidentiality of data.* The exchange of information carried out under this rule shall be consistent with all laws, regulations, and rules relating to the confidentiality or privacy of personal information or medical records, including but not limited to:

a. The federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and

b. Regulations promulgated in accordance with that Act and published in 45 CFR Parts 160 through 164.

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CHAPTER 1
DESCRIPTION OF ORGANIZATION

1.1(17A,455A) Authority
1.2(17A,455A) Mission and programs
1.3(17A,455A) Organization
1.4(17A,455A) Location of offices
1.5(455A) Business hours
1.6(17A,455A) Internet Web site

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

2.1(17A,22) Purpose and scope
2.2(17A,22) Definitions
2.3(17A,22) Requests for access to records
2.4(17A,22) Access to confidential records
2.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination
2.6(17A,22) Procedure by which additions, dissents or objections may be entered into certain records
2.7(17A,22) Consent to disclosure by the subject of a confidential record
2.8(17A,22) Notice to suppliers of information
2.9(17A,22) Disclosures without the consent of the subject
2.10(17A,22) Routine use
2.11(17A,22) Consensual disclosure of confidential records
2.12(17A,22) Release to subject
2.13(17A,22) Availability of records
2.14(17A,22) Personally identifiable information
2.15(17A,22) Other groups of records

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

3.1(17A,455A) Scope
3.2(17A,455A) Submission of information
3.3(17A,455A) Submission of complaints—investigations

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

(Uniform Rules)

4.3(17A) Public rule-making docket
4.4(17A) Notice of proposed rule making
4.5(17A) Public participation
4.6(17A) Regulatory analysis
4.10(17A) Exemptions from public rule-making procedures
4.11(17A) Concise statement of reasons
4.13(17A) Agency rule-making record

CHAPTER 5
PETITIONS FOR RULE MAKING
(Uniform Rules)

5.1(17A) Petition for rule making
5.3(17A) Inquiries

CHAPTER 6
DECLARATORY ORDERS
(Uniform Rules)

6.1(17A) Petition for declaratory order
6.2(17A) Notice of petition
6.3(17A) Intervention
6.4(17A) Briefs
6.5(17A) Inquiries
6.6(17A) Service and filing of petitions and other papers
6.7(17A) Consideration
6.8(17A) Action on petition
6.9(17A) Refusal to issue order
6.12(17A) Effect of a declaratory order

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

7.1(17A,455A) Scope and applicability
7.2(17A,455A) Definitions
7.3(17A,455A) Time requirements
7.4(17A,455A) Appeal
7.5(17A,455A) Commencement of contested case—notice of hearing
7.6(17A,455A) Informal settlement negotiations
7.7(17A,455A) Presiding officer
7.8(17A,455A) Disqualification of presiding officer
7.9(17A,455A) Separation of functions and ex parte communications
7.10(17A,455A) Consolidation and severance
7.11(17A,455A) Intervention
7.12(17A,455A) Pleadings
7.13(17A,455A) Defaults
7.14(17A,455A) Prehearing procedures
7.15(17A,455A) Hearing procedures
7.16(17A,455A) Evidence
7.17(17A,455A) Posthearing procedures and orders
7.18(17A,455A) Emergency proceedings
7.19(17A,455A) License suspension or revocation and other licensee disciplinary proceedings
7.20(17A,455A) Waiver of procedures

CHAPTER 8
CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

8.1(17A,455B,456A,461A,473) Contract policy
8.2(17A,26,455B,456A,461A,473) Contracts for public improvements
8.3(17A,455B,456A,461A,473) Contracts for professional services
8.4(17A,455B,456A,461A,473) Approval and award of contracts
8.5(17A,456A,461A) Contract for sale of timber
8.6(455B) Emergency response
8.7(573) Interest on retained funds

CHAPTER 9
GROUNDWATER HAZARD DOCUMENTATION

9.1(558) Authority, purpose and application
9.2(558) Form

CHAPTER 10
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

10.1(17A,455A) Applicability
10.2(17A,455A) Authority
10.3(17A,455A) Interpretive rules
10.4(17A,455A) Criteria for waiver or variance
10.5(17A,455A) Burden of persuasion
10.6(17A,455A) Special waiver or variance rules not precluded
10.7(17A,455A) Administrative deadlines
10.8(17A,455A) Filing of petition
10.9(17A,455A) Contents of petition
10.10(17A,455A) Additional information
10.11(17A,455A) Notice
10.12(17A,455A) Hearing procedures
10.13(17A,455A) Ruling
10.14(17A,455A) Conditions
10.15(17A,455A) Time for ruling
10.16(17A,455A) When deemed denied
10.17(17A,455A) Service of decision
10.18(17A,455A) Public availability
10.19(17A,455A) Voiding or cancellation
10.20(17A,455A) Violations
10.21(17A,455A) Defense

CHAPTER 11
THE IOWA NATURE STORE

11.1(456A) Purpose
11.2(456A) The nature store
11.3(456A) Funding

CHAPTER 12
SPECIAL NONRESIDENT DEER AND TURKEY LICENSES

12.1(483A) Purpose
12.2(483A) Definitions
12.3(483A) Availability of special licenses
12.4(483A) Coordinator duties
12.5(483A) Request, review and selection process
12.6(483A) Consideration of requests
12.7(483A) Ranking criteria
12.8(483A) Services provided by recipients of special licenses
12.9(483A) License term
12.10(483A) Reporting
12.11(483A) Prohibitions
12.12(483A) License costs
12.13(483A) Hunter safety requirements

CHAPTER 13
Reserved

CHAPTER 14
CONCESSIONS

14.1(456A) Adoption by reference

CHAPTER 15
REVOCATION, SUSPENSION, AND NONRENEWAL OF LICENSE
FOR FAILURE TO PAY STATE LIABILITIES

15.1(272D,261) Purpose and use
15.2(272D,261) Definitions
15.3(272D,261) Requirements of the department
15.4(272D,261) No administrative appeal of the department's action
15.5(272D,261) District court hearing

CHAPTER 15
REVOCATION, SUSPENSION, AND NONRENEWAL OF LICENSE FOR FAILURE TO PAY STATE LIABILITIES

561—15.1(272D,261) Purpose and use. This chapter is intended to help collect liabilities of the state or a state agency from persons who have licenses with the department. This chapter shall apply to all licenses issued, renewed or otherwise authorized by the department.
[**ARC 8774B**, IAB 6/2/10, effective 7/7/10]

561—15.2(272D,261) Definitions. For purposes of this chapter, the following definitions shall apply:

"Certificate of noncompliance" means a document provided by the collecting agency certifying the named person has outstanding liability placed with the collecting agency and has not entered into an approved payment plan to pay the liability.

"Collecting agency" means the centralized collection unit of the department of revenue or the Iowa college student aid commission.

"Department" means the department of natural resources.

"Liability" means a debt or obligation placed with the collecting agency for collection that is greater than $1,000. For purposes of this chapter, "liability" does not include child support payments collected pursuant to Iowa Code chapter 252J.

"License" means a license, certification, registration, permit, approval, renewal or other similar authorization issued to a person by the department which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation, including those authorizations set out in Iowa Code chapters 321G, 321I, 455B, 455C, 455D, 456A, 459, 459A, 461A, 462A, 481A, 481B, 481C, 482, 483A, 484B and 484C.

"Licensee" means a person to whom a license has been issued by the department or who is seeking the issuance of a license from the department.

"Notice of intent" means a notice sent to a licensee indicating the department's intent to suspend, revoke, or deny renewal or issuance of a license.

"Obligor" means a person with a liability placed with the collecting agency.

"Person" means a licensee.

"Withdrawal of a certificate of noncompliance" means a document provided by the collecting agency certifying that the certificate of noncompliance is withdrawn and that the department may proceed with issuance, reinstatement, or renewal of a person's license.
[**ARC 8774B**, IAB 6/2/10, effective 7/7/10]

561—15.3(272D,261) Requirements of the department.

15.3(1) *Records.*

a. The department shall collect and maintain records of its licensees that must include, at a minimum, the following:

(1) The licensee's first and last names.

(2) The licensee's current known address.

(3) The licensee's social security number.

b. The records shall be made available to the collecting agency so that the collecting agency may match to the records the names of persons with any liabilities placed with the collecting agency for collections. The records must be submitted in an electronic format and updated on a quarterly basis.

15.3(2) *Certificate of noncompliance.* Upon receipt of a certificate of noncompliance from the collecting agency, the department shall initiate rules and procedures for the suspension, revocation, or denial of issuance or renewal of a license to a person.

15.3(3) *Notice of intent.* The department shall provide to a person a notice of intent to suspend, revoke or deny issuance or renewal of the person's license in accordance with Iowa Code chapter 272D or Iowa Code section 261.126, whichever is appropriate. The suspension, revocation, or denial shall be effective no sooner than 30 days following the issuance of the notice of intent to the person. The notice shall state all of the following:

a. That the department has received a certificate of noncompliance from the collecting agency and intends to suspend, revoke or deny issuance or renewal of a person's license;

b. That the person must contact the collecting agency to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

c. That the department will revoke, suspend or deny issuance or renewal of the person's license unless a withdrawal of a certificate of noncompliance is received from the collecting agency within 30 days from the date of the notice of intent;

d. That in the event the department's rules and procedures conflict with the additional rules and procedures under this chapter, the rules and procedures of this chapter shall apply;

e. That mistakes of fact in the amount of the liability owed and the person's identity may not be contested to the department; and

f. That the person may request a district court hearing as outlined in rule 701—153.10(272D).

15.3(4) *Withdrawal.* Upon receipt of a withdrawal of a certificate of noncompliance from the collecting agency, the department shall immediately reinstate, renew, or issue a license if the person is otherwise in compliance with the department's requirements.

[**ARC 8774B**, IAB 6/2/10, effective 7/7/10]

561—15.4(272D,261) No administrative appeal of the department's action. Pursuant to Iowa Code sections 261.126 and 272D.8, a person does not have a right to a hearing before the department to contest the department's action under this chapter but may request a court hearing pursuant to rule 561—15.5(272D,261).

[**ARC 8774B**, IAB 6/2/10, effective 7/7/10]

561—15.5(272D,261) District court hearing. A person may seek review of the actions listed in 701—subrule 153.14(1) and request a hearing before the district court by filing an application with the district court in the county in which the majority of the liability was incurred. The person must send a copy of the application to the collecting agency by regular mail. The application must be filed no later than 30 days after the department issues its notice of intent.

15.5(1) *Scheduling.* The clerk of the district court shall schedule a hearing and mail a copy of the scheduling order to the person, the collecting agency, and the department.

15.5(2) *Certification.* Prior to the hearing, the collecting agency shall certify to the court a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the department shall certify to the court a copy of the notice issued pursuant to subrule 15.3(3).

15.5(3) *Stay.* Upon receipt of a copy of a scheduling order from the clerk of court and prior to the hearing, the department shall stay any action contemplated on the person's license pursuant to the notice of intent.

15.5(4) *Hearing.* The hearing on the person's application shall be scheduled and held within 30 days of the filing of the application. However, if the person fails to appear at the scheduled hearing, the stay shall be lifted and the department shall continue its procedures pursuant to the notice of intent.

15.5(5) *Scope of review.* The district court's review shall be limited to demonstration of the amount of the liability owed or the identity of the person.

15.5(6) *Findings.* If the court finds the collecting agency was in error either in issuing a certificate of noncompliance or in its failure to issue a withdrawal of a certificate of noncompliance, the collecting agency shall issue a withdrawal of a certificate of noncompliance to the department. If the court finds the collecting agency was justified in issuing a certificate of noncompliance or in not issuing a withdrawal of a certificate of noncompliance, a stay imposed under subrule 15.5(3) shall be lifted and the department shall proceed with the action as outlined in its notice of intent.

[**ARC 8774B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code chapter 272D and Iowa Code section 261.126.

[Filed ARC 8774B (Notice ARC 8598B, IAB 3/10/10), IAB 6/2/10, effective 7/7/10]

CHAPTERS 16 to 99
Reserved

CHAPTERS 100 and 101
Transferred to Public Defense[650] IAB 7/29/87

NATURAL RESOURCE COMMISSION[571]

[Prior to 12/31/86, see Conservation Commission [290], renamed Natural Resource Commission[571] under the "umbrella" of Department of Natural Resources by 1986 Iowa Acts, chapter 1245]

TITLE I
GENERAL

CHAPTER 1
OPERATION OF NATURAL RESOURCE COMMISSION

1.1(17A,455A) Scope
1.2(17A,455A) Time of meetings
1.3(17A,455A) Place of meetings
1.4(17A,455A) Notification of meetings
1.5(17A,455A) Attendance and participation by the public
1.6(17A,455A) Quorum and voting requirements
1.7(17A,455A) Conduct of meeting
1.8(17A,455A) Minutes, transcripts, and recordings of meetings
1.9(17A,455A) Officers and duties
1.10(17A,455A) Election and succession of officers
1.11(68B) Sales of goods and services

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

2.1(22) Adoption by reference

CHAPTER 3
SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

3.1(17A) Adoption by reference

CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

4.1(17A) Adoption by reference

CHAPTER 5
PETITIONS FOR RULE MAKING

5.1(17A) Adoption by reference

CHAPTER 6
DECLARATORY RULINGS

6.1(17A) Adoption by reference

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

7.1(17A) Adoption by reference

CHAPTER 8
CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

8.1(17A) Adoption by reference

CHAPTER 9
STATE MIGRATORY WATERFOWL, TROUT AND HABITAT STAMP DESIGN CONTESTS

9.1(483A,484A) Design contests
9.2(483A,484A) Selection of promoter
9.3(483A,484A) Stamp design—related proceeds

9.4(483A,484A) Design
9.5(483A,484A) Commissioned design
9.6(483A,484A) Financial records
9.7(483A,484A) Title to property

CHAPTER 10
FORFEITED PROPERTY

10.1(809) Purpose
10.2(809) Definitions
10.3(809) Jurisdiction
10.4(809) Supervisor approval
10.5(809) Disposition of general property
10.6(809) Disposition of weapons
10.7(809) Property destroyed
10.8(809) Disposition of furs

CHAPTER 11
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

11.1(17A) Adoption by reference
11.2(17A) Report to commission

CHAPTER 12
CONSERVATION EDUCATION

DIVISION I
RESOURCE ENHANCEMENT AND
PROTECTION CONSERVATION EDUCATION PROGRAM (REAP)

12.1(455A) Purpose
12.2(455A) Conservation education program policy
12.3(455A) Conservation education program board
12.4(455A) Definitions
12.5(455A) Eligibility for funds
12.6(455A) Grant applications, general procedures
12.7(455A) Conflict of interest
12.8(455A) Criteria
12.9(455A) Grantee responsibilities
12.10(455A) Board review and approval
12.11(455A) Waivers of retroactivity
12.12(455A) Penalties
12.13(455A) Remedy
12.14(455A) Termination for convenience
12.15(455A) Termination for cause
12.16(455A) Responsibility of grantee at termination
12.17(455A) Appeals
12.18 and 12.19 Reserved

DIVISION II
RECREATION EDUCATION COURSES
PART I
VOLUNTEER INSTRUCTOR CERTIFICATION AND
DECERTIFICATION PROCEDURES

12.20(321G,321I,462A,483A) Purpose
12.21(321G,321I,462A,483A) Definitions
12.22(321G,321I,462A,483A) Certified instructor application process
12.23(321G,321I,462A,483A) Requirements for instructor certification
12.24(321G,321I,462A,483A) Certified instructor responsibilities and requirements

12.25(321G,321I,462A,483A) Grounds for revocation or suspension of instructor certification
12.26(321G,321I,462A,483A) Temporary suspensions and immediate revocations of instructor certifications
12.27(321G,321I,462A,483A) Termination of certification
12.28(321G,321I,462A,483A) Compensation for instructors
12.29(321G,321I,462A,483A) Hearing rights
12.30 Reserved

PART II
RECREATION EDUCATION PROGRAMS

12.31(321I) ATV education program
12.32(321G) Snowmobile education program
12.33(462A) Boating education program
12.34(483A) Hunter safety and ethics education program
12.35(321G) Snow groomer operator education program
12.36(483A) Bow hunter education program
12.37(483A) Fur harvester education program

CHAPTER 13
PERMITS AND EASEMENTS FOR CONSTRUCTION AND RELATED ACTIVITIES ON PUBLIC LANDS AND WATERS

13.1(455A,461A,462A) Purpose
13.2(455A,461A,462A) Affected public lands and waters
13.3(455A,461A) Definitions

DIVISION I
PERMITS

13.4(455A,461A) Permits required
13.5(455A,461A) Interest in real estate
13.6(455A,461A,462A) Evaluation
13.7(455A,461A,462A) Review standards
13.8(455A,461A) Leases or easements as a condition of permits
13.9(455A,461A,462A) Permit application
13.10(455A,461A) Additional information or analysis required for permit review
13.11(455A,461A) Permit issued or denied
13.12(455A,461A) Authorized agent
13.13(455A,461A) Inspection
13.14(455A,461A) Additional information or analysis required during term of the permit
13.15(455A,461A) Violations; types of enforcement actions; citation and notice of violation
13.16(455A,461A) Removal orders
13.17(455A,461A) Civil penalties
13.18(455A,461A) Report of completion
13.19(455A,461A) Final inspection
13.20(455A,461A) Permit extensions
13.21(455A,461A) Project modifications
13.22(455A,461A) Transferability
13.23 to 13.50 Reserved

DIVISION II
LEASES AND EASEMENTS

13.51(455A,461A) Leases
13.52(455A,461A) Easements
13.53(455A,461A) Appeals

TITLE II
LICENSES, PERMITS AND CONCESSION CONTRACTS

CHAPTER 14
CONCESSIONS

14.1(461A) Definitions
14.2(461A) Advertising or notice procedure
14.3(461A) Bidding process
14.4(461A) Selection of a concessionaire
14.5(461A) Concession contract—general
14.6(461A) Dispute resolution
14.7(461A) Suspension or termination for cause
14.8(461A) Severability

CHAPTER 15
GENERAL LICENSE REGULATIONS

15.1(483A) Scope

DIVISION I
LICENSE SALES, REFUNDS AND ADMINISTRATION

15.2(483A) Definitions
15.3(483A) Form of licenses
15.4(483A) Administration fee
15.5(483A) Electronic license sales
15.6(483A) Paper license sales
15.7(483A) Lost or destroyed license blanks
15.8(483A) Refund or change requests for special deer and turkey hunting licenses and general licenses
15.9 to 15.15 Reserved

DIVISION II
MULTIPLE OFFENDER AND WILDLIFE VIOLATOR COMPACT

15.16(481A,481B,482,483A,484A,484B) Multiple offenders—revocation and suspension of hunting, fishing, and trapping privileges from those persons who are determined to be multiple offenders
15.17(456A) Wildlife violator compact
15.18 to 15.20 Reserved

DIVISION III
SPECIAL LICENSES

15.21(483A) Fishing license exemption for patients of substance abuse facilities
15.22(481A) Authorization to use a crossbow for deer and turkey hunting during the bow season by handicapped individuals
15.23(483A) Free hunting and fishing license for low-income persons 65 years of age and older or low-income persons who are permanently disabled
15.24(483A) Free annual fishing license for persons who have severe physical or mental disabilities
15.25(483A) Transportation tags for military personnel on leave from active duty
15.26 to 15.40 Reserved

DIVISION IV
EDUCATION AND CERTIFICATION PROGRAMS

15.41(483A) Hunter safety and ethics education program
15.42(483A) Testing procedures

15.43(321G,462A,483A) Volunteer bow and fur harvester education instructors, snowmobile and all-terrain vehicle (ATV) safety instructors, boating safety instructors and hunter education instructors
15.44 to 15.50 Reserved

DIVISION V
LICENSE REVOCATION, SUSPENSION, AND MODIFICATION DUE TO LIABILITIES OWED TO THE STATE

15.51(272D) Purpose and use
15.52(272D) Definitions
15.53(272D) Requirements of the department
15.54(272D) No administrative appeal of the department's action
15.55(272D) District court hearing

CHAPTER 16
DOCKS AND OTHER STRUCTURES ON PUBLIC WATERS

16.1(461A,462A) Definitions

DIVISION I
PRIVATE, COMMERCIAL AND PUBLIC DOCKS

16.2(461A,462A) Scope of division and classes of permits
16.3(461A,462A) Standard requirements for all docks
16.4(461A,462A) Class I permits for standard private docks
16.5(461A,462A) Class I permits for docks permitted by Corps of Engineers
16.6(461A,462A) Class II permits for docks authorized by cities and counties that own or otherwise control shoreline property
16.7(461A,462A) Class III permits for nonstandard private docks
16.8(461A,462A) Class IV permits for commercial docks
16.9(461A,462A) Exceptions for renewal of Class III and Class IV permits for existing docks
16.10(461A,462A) Exceptions to Class III and Class IV permits for new structures
16.11 Reserved
16.12(461A,462A) Initial decision and right of appeal
16.13(461A,462A) Application forms and administrative fees
16.14 to 16.16 Reserved
16.17(461A,462A) Duration and transferability of permits; refund of application fees; suspension, modification, or revocation of permits; complaint investigation; property line location
16.18(461A,462A) Exemptions from winter removal requirement
16.19(461A,462A) General conditions of all dock permits
16.20(461A,462A) Permit criteria for rafts, platforms, or other structures
16.21 to 16.24 Reserved

DIVISION II
DOCK MANAGEMENT AREAS

16.25(461A) Designation or modification of dock management areas
16.26(461A) Procedures and policies for dock site permits and hoist or slip assignments in dock management areas
16.27(461A) Standard requirements for dock management area docks
16.28(461A) Dock management area permit restrictions and conditions
16.29(461A) Fees for docks in dock management areas
16.30(461A) Suspension, modification or revocation of dock management area permits
16.31(461A) Persons affected by DMA permit—hearing request

CHAPTER 17
BARGE FLEETING REGULATIONS

17.1(461A) Purpose
17.2(461A) Policy
17.3(461A) Applicability
17.4(461A) Definitions
17.5(461A) Barge fleeting leases
17.6(461A) Restricted areas
17.7(461A) Prohibited areas
17.8(461A) Riparian rights
17.9(461A) Standards
17.10(461A) Application
17.11(461A) Application review and approval
17.12(461A) Lease fee
17.13(461A) Renewals
17.14(461A) Disputes concerning leases
17.15(461A) Lease revocation
17.16(461A) Nonuse

CHAPTER 18
RENTAL FEE SCHEDULE FOR STATE-OWNED PROPERTY,
RIVERBED, LAKEBED, AND WATERFRONT LANDS

18.1(461A) General
18.2(461A) Table 1—Areas designated for industrial or commercial use by the natural resource commission
18.3(461A) Table 2—Areas designated for noncommercial use or use by nonprofit organizations
18.4(461A) Other fees

CHAPTER 19
SAND AND GRAVEL PERMITS

19.1(461A) Purpose
19.2(461A) Definitions
19.3(461A) Permit applications
19.4(461A) Permit conditions and operating procedures

CHAPTER 20
MANUFACTURER'S CERTIFICATE OF ORIGIN

20.1(462A) Definitions
20.2(462A) Applicability
20.3(462A) Certificate of origin—content
20.4(462A) Procedure—manufacturer
20.5(462A) Procedure—dealer
20.6(462A) Procedure—purchaser
20.7(462A) Procedure—county recorder
20.8(462A) Vessel titling

TITLE III
ASSISTANCE PROGRAMS

CHAPTER 21
AGRICULTURAL LEASE PROGRAM

21.1(456A) Purpose
21.2(456A) Definitions

21.3(456A) Agricultural lease policy
21.4(456A) Lease procedures

CHAPTER 22
WILDLIFE HABITAT ON PRIVATE LANDS PROMOTION PROGRAM

22.1(456A,483A) Purpose
22.2(456A,483A) Authority
22.3(456A,483A) Project scope
22.4(456A,483A) Availability of funds
22.5(483A) Winter habitat areas
22.6(456A,483A) Shelterbelts
22.7(456A,483A) Pheasant and quail restoration practices
22.8(456A,483A) Cost reimbursement
22.9(456A,483A) Wildlife habitat enhancement on public and private lands

CHAPTER 23
WILDLIFE HABITAT PROMOTION WITH LOCAL ENTITIES PROGRAM

23.1(483A) Purpose and definitions
23.2(483A) Availability of funds
23.3(483A) Eligibility
23.4(483A) Project limitations
23.5(483A) Eligibility for cost-sharing assistance
23.6(483A) Application for assistance
23.7(483A) Project review and selection
23.8(483A) Commission review
23.9(483A) Grant amendments
23.10(483A) Timely commencement of projects
23.11(483A) Project period
23.12(483A) Payments
23.13(483A) Record keeping and retention
23.14(483A) Penalties

CHAPTER 24
BLUFFLANDS PROTECTION PROGRAM AND REVOLVING LOAN FUND

24.1(161A) Purpose
24.2(161A) Allocation of funds
24.3(161A) Definitions
24.4(161A) Types of acquisitions
24.5(161A) Application for loans
24.6(161A) Approval of loan applications
24.7(161A) Interest and other terms of loan agreements
24.8(161A) Eligible expenditures with loan funds
24.9(161A) Custody and management of land during loan term
24.10(161A) Loans not to exceed appraised value

CHAPTER 25
CERTIFICATION OF LAND AS NATIVE PRAIRIE OR WILDLIFE HABITAT

25.1(427) Purpose
25.2(427) Definitions
25.3(427) Restrictions
25.4(427) Maintenance
25.5(427) Certification

25.6(427) Application for exemption
25.7(427) Decertification

CHAPTER 26
RELOCATION ASSISTANCE

26.1(316) Definitions
26.2(316) Actual reasonable moving costs and related expenses
26.3(316) Replacement housing payments for homeowners
26.4(316) Replacement housing payments for tenants and certain others
26.5(316) Notice of relocation assistance advisory service
26.6(316) Preconstruction project certificate
26.7(316) Record of payment determinations and claims for benefits paid
26.8(316) Last resort housing

CHAPTER 27
LANDS AND WATERS CONSERVATION FUND PROGRAM

27.1(456A) Purpose
27.2(456A) Apportionment distribution
27.3(456A) Eligibility requirements
27.4(456A) Assistance ceiling
27.5(456A) Grant application submission
27.6(456A) Project review and selection
27.7(456A) Public participation
27.8(456A) Commission review
27.9(456A) Federal review
27.10(456A) Grant amendments
27.11(456A) Timely commencement of projects
27.12(456A) Project period
27.13(456A) Reimbursements
27.14(456A) Ineligible items
27.15(456A) Record keeping and retention

CHAPTER 28
SNOWMOBILE AND ALL-TERRAIN VEHICLE REGISTRATION
REVENUE COST-SHARE PROGRAM

28.1(321G) Definitions
28.2(321G) Purpose and intent
28.3(321G) Distribution of funds
28.4(321G) Application procedures
28.5(321G) Review and selection committees
28.6(321G) Director's review of approved projects
28.7(321G) Project selection criteria
28.8(321G) Eligibility of projects
28.9(321G) Use of funded items
28.10(321G) Disposal of equipment, facilities or property
28.11(321G) Record keeping
28.12(321G) Sponsors bonded
28.13(321G) Items eligible for funding specific to the all-terrain vehicle program
28.14(321G) Items eligible for funding specific to the snowmobile program
28.15(321G) Competitive bids
28.16(321G) Prepayment for certain anticipated costs
28.17(321G) Expense documentation, balance payment or reimbursement
28.18(321G) Use of funds

CHAPTER 29
LOCAL RECREATION INFRASTRUCTURE GRANTS PROGRAM

29.1(8,77GA,ch1219) Purpose
29.2(8,77GA,ch1219) Definitions
29.3(8,77GA,ch1219) Eligibility requirements
29.4(8,77GA,ch1219) Assistance ceiling and cost share
29.5(8,77GA,ch1219) Minimum grant amount
29.6(8,77GA,ch1219) Grant application submission
29.7(8,77GA,ch1219) Project review and selection
29.8(8,77GA,ch1219) Rating system not used
29.9(8,77GA,ch1219) Applications not approved for funding
29.10(8,77GA,ch1219) Commission review
29.11(8,77GA,ch1219) Grant amendments
29.12(8,77GA,ch1219) Timely commencement of projects
29.13(8,77GA,ch1219) Payments
29.14(8,77GA,ch1219) Record keeping and retention
29.15(8,77GA,ch1219) Eligible projects
29.16(8,77GA,ch1219) Project life and recovery of funds
29.17(8,77GA,ch1219) Unlawful use of funds
29.18(8,77GA,ch1219) Remedy
29.19(8,77GA,ch1219) Ineligibility

CHAPTER 30
WATERS COST-SHARE AND GRANT PROGRAMS

DIVISION I
WATER RECREATION ACCESS COST-SHARE PROGRAM

30.1(452A) Title and purpose
30.2(452A) Availability of funds
30.3(452A) Eligibility of development projects
30.4(452A) Eligibility of acquisition projects
30.5(452A) Projects not eligible
30.6(452A) Waiver of retroactivity
30.7(452A) Establishing project priorities
30.8(452A) Application procedures
30.9(452A) Cost-sharing rates
30.10(452A) Joint sponsorship
30.11(452A) Control of project site
30.12(452A) Project agreements
30.13(452A) Reimbursement procedures
30.14(77GA,SF2381) Implementation of pilot program for state and local cooperative lake rehabilitation
30.15 to 30.50 Reserved

DIVISION II
WATER TRAILS DEVELOPMENT PROGRAM AND LOW-HEAD DAM PUBLIC HAZARD PROGRAM

30.51(455A,461A,462A) Definitions
30.52(455A,461A,462A) Purpose and intent
30.53(455A,461A,462A) Program descriptions
30.54(455A,461A,462A) Announcement of funding opportunity
30.55(455A,461A,462A) Grant requirements
30.56(455A,461A,462A) Application procedures
30.57(455A,461A,462A) Proposal evaluation
30.58(455A,461A,462A) Sponsor eligibility

30.59(455A,461A,462A) Project eligibility
30.60(455A,461A,462A) Cost-share requirements
30.61(455A,461A,462A) Evaluation criteria
30.62(455A,461A,462A) Disbursement of awards
30.63(455A,461A,462A) Water trails advisory committee

CHAPTER 31
PUBLICLY OWNED LAKES PROGRAM

31.1(456A) Purpose
31.2(456A) Definitions
31.3(456A) Priority of watersheds
31.4(456A) Application
31.5(456A) Application review
31.6(456A) Commission approvals

CHAPTER 32
PRIVATE OPEN SPACE LANDS

32.1(9H) Applicability
32.2(9H) Definition

CHAPTER 33
RESOURCE ENHANCEMENT AND PROTECTION PROGRAM:
COUNTY, CITY AND PRIVATE OPEN SPACES GRANT PROGRAMS

Part 1
GENERAL PROVISIONS

33.1(455A) Purpose
33.2(455A) Resource enhancement policy
33.3(455A) Definitions
33.4(455A) Restrictions
33.5(455A) Grant applications, general procedures
33.6(455A) Appraisals
33.7(455A) Groundwater hazard statements
33.8(455A) Rating systems not used
33.9(455A) Applications not selected for grants
33.10(455A) Similar development projects
33.11(455A) Commission review and approval
33.12(455A) Timely commencement and completion of projects
33.13(455A) Waivers of retroactivity
33.14(455A) Project amendments
33.15(455A) Payments
33.16(455A) Record keeping and retention
33.17(455A) Penalties
33.18 Reserved
33.19(455A) Property tax reimbursement
33.20(455A) Public hearing
33.21(455A) Conflict of interest
33.22(455A) Public communications
33.23 to 33.29 Reserved

Part 2
COUNTY GRANTS

33.30(455A) County conservation account
33.31 to 33.39 Reserved

Part 3
CITY GRANTS

33.40(455A) Competitive grants to cities
33.41 to 33.49 Reserved

Part 4
PRIVATE GRANTS

33.50(455A) Private cost-sharing program

CHAPTER 34
COMMUNITY FORESTRY
GRANT PROGRAM (CFGP)

34.1(461A) Purpose
34.2(461A) Definitions
34.3(461A) Availability of funds
34.4(461A) Eligibility of forestry development projects
34.5(461A) Eligibility of community tree planting projects
34.6(461A) Projects not eligible
34.7(461A) Eligible applicants
34.8(461A) Establishing project priorities
34.9(461A) Application procedures
34.10(461A) Requirements for funding
34.11(461A) Project agreements
34.12(461A) Reimbursement procedures

CHAPTER 35
FISH HABITAT PROMOTION FOR COUNTY CONSERVATION BOARDS

35.1(483A) Purpose and definitions
35.2(483A) Availability of funds
35.3(483A) Program eligibility
35.4(483A) Eligibility for cost-sharing assistance
35.5(483A) Application for assistance
35.6(483A) Project review and selection
35.7(483A) Commission review
35.8(483A) Grant amendments
35.9(483A) Timely commencement of projects
35.10(483A) Project period
35.11(483A) Payments
35.12(483A) Record keeping and retention
35.13(483A) Penalties

TITLE IV
RECREATIONAL VESSEL AND VEHICLE
REGISTRATION AND SAFETY

CHAPTER 36
GREEN VALLEY LAKE SPECIAL WATER ACTIVITY RULES

36.1(462A) General
36.2(462A) Inboard boats
36.3(462A) Racing craft
36.4(462A) Wake
36.5(462A) Speed
36.6(462A) Hours
36.7(462A) Ski zone
36.8(462A) Traffic pattern

36.9(462A) Designated activities in ski zone
36.10(462A) Designated areas
36.11(462A) Traffic
36.12(462A) Lifesaving device
36.13(462A) Speed
36.14(462A) Distance from shore
36.15(462A) Horsepower limitation

CHAPTER 37
BOATING SAFETY EQUIPMENT

37.1(462A) Fire extinguishers
37.2(462A) Flame arrester required
37.3 to 37.5 Reserved
37.6(462A) Lights on vessels
37.7(462A) Lighting requirements for sailing vessels
37.8(462A) Sailing vessels with auxiliary power
37.9 to 37.12 Reserved
37.13(462A) Buoyant safety equipment

CHAPTER 38
BOAT REGISTRATION AND NUMBERING

38.1(462A) Emblem placed
38.2 to 38.5 Reserved
38.6(462A) Procedure for application for boat registration number—content
38.7 to 38.9 Reserved
38.10(462A) Information on certificate
38.11(462A) Registration applied for card
38.12(462A) Vessels in storage
38.13 and 38.14 Reserved
38.15(462A) Numbering pattern to be used
38.16 to 38.18 Reserved
38.19(462A) Display of number on vessel, as to size, block type and contrasting color
38.20(462A) Special certificates for boat dealers or manufacturers
38.21(462A) Boat dealer's annual report of vessels with expired registrations
38.22 to 38.24 Reserved
38.25(462A) Number designating passenger capacity
38.26(462A) Monthly reports by county recorders
38.27 to 38.29 Reserved
38.30(462A) Boats for hire

CHAPTER 39
BOATING PASSENGER CAPACITY

39.1(462A) U.S. Coast Guard capacity rating
39.2(462A) Vessels assigned a capacity rating by the manufacturer
39.3(462A) Vessels not containing capacity rating information
39.4(462A) Incorrect registration

CHAPTER 40
BOATING SPEED AND DISTANCE ZONING

40.1(462A) Restricted areas
40.2(462A) Uniform buoy system
40.3(462A) Commission approval
40.4(462A) Right for aggrieved party to appeal

40.5(462A)	Rathbun Lake, Appanoose County—zoned areas
40.6(462A)	Red Rock Lake, Marion County—zoned areas
40.7(462A)	Coralville Lake, Johnson County—zoned areas
40.8(462A)	Saylorville Lake, Polk County—zoned areas
40.9(462A)	Lake Odessa in Louisa County
40.10(462A)	Mississippi River lock and dam safety zone
40.11(462A)	Joyce Slough Area
40.12(462A)	Swan Slough, Camanche, Iowa
40.13(462A)	Massey Slough
40.14(462A)	Black Hawk County waters
40.15(462A)	Mitchell County waters
40.16(462A)	Maquoketa River
40.17(462A)	Zoning of off-channel waters of the Wapsipinicon River in Pinicon Ridge Park in Linn County
40.18(462A)	Speed restrictions on Lake Manawa
40.19(462A)	Zoning of Little Wall Lake
40.20(462A)	Lake Icaria, Adams County—watercraft use
40.21(462A)	Zoning of the Des Moines River
40.22(462A)	Upper Gar Lake, Dickinson County
40.23(462A)	Zoning of the Mississippi River, Guttenberg river mile 616, Clayton County
40.24(462A)	Mt. Ayr City Lake (Loch Ayr)
40.25(462A)	Iowa River in Iowa City, Johnson County
40.26(462A)	Zoning of the Mississippi River, Dubuque, Dubuque County
40.27(462A)	Zoning Harpers Slough, Harpers Ferry, Allamakee County
40.28(462A)	Black Hawk Lake, Sac County—zoned areas
40.29(462A)	Speed and other restrictions on Brown's Lake, Woodbury County
40.30(462A)	Speed and other restrictions on Snyder Bend Lake, Woodbury County
40.31(462A)	Speed restrictions on East Okoboji and West Okoboji Lakes in Dickinson County
40.32(462A)	Spirit Lake, Dickinson County—zoned areas
40.33(462A)	Speed restrictions on the Mississippi River, Jackson County, at Spruce Creek County Park
40.34(462A)	Speed restrictions on the Mississippi River, Jackson County, at the city of Sabula
40.35(462A)	Speed restrictions on the Greene Impoundment of the Shell Rock River
40.36(462A)	Zoning of the Iowa River, Iowa Falls, Hardin County
40.37(462A)	Zoning of Crystal Lake
40.38(462A)	Five Island Lake, Palo Alto County
40.39(462A)	Lost Island Lake, Palo Alto and Clay Counties
40.40(462A)	Ingham Lake, Emmet County
40.41(462A)	Storm Lake, Buena Vista County
40.42(462A)	Raccoon River Regional Park Lake, Polk County
40.43(462A)	Zoning of the Mississippi River, Bellevue, Jackson County
40.44(462A)	Three Mile Lake, Union County—watercraft use
40.45(462A)	Zoning of the Cedar River
40.46(462A)	Zoning of Carter Lake, Pottawattamie County
40.47(462A)	Zoning of the Mississippi River, McGregor, Clayton County
40.48(462A)	Zoning of the Mississippi River, Marquette, Clayton County
40.49(462A)	Zoning of Green Island, Jackson County
40.50(462A)	Mooring of vessels on riparian property of the state of Iowa
40.51(462A)	Little River Lake, Decatur County
40.52(462A)	Zoning of the Mississippi River, Johnson Slough, Clayton County
40.53(462A)	Zoning of the Mississippi River, Mud Lake, Dubuque County
40.54(462A)	Nighttime speed limit, Dickinson County

40.55(462A) Zoning of Clear Lake, Cerro Gordo County
40.56(462A) Zoning of Mississippi River, Des Moines County, city of Burlington
40.57(462A) Zoning of Catfish Creek, Mines of Spain State Recreation Area, Dubuque County
40.58(462A) Zoning of Lake Cornelia, Wright County

CHAPTER 41
BOATING NAVIGATION AIDS

41.1(462A) Definitions
41.2(462A) Waterway markers
41.3(462A) Authority to place markers
41.4(462A) Maintenance of waterway markers
41.5 and 41.6 Reserved
41.7(462A) Display of waterway markers
41.8(462A) Specifications for waterway markers
41.9(462A) Waterway marking devices
41.10(462A) The diver's flag

CHAPTER 42
BOATING ACCIDENT REPORTS

42.1(462A) Accident report
42.2(462A) Procedure
42.3(462A) Contents

CHAPTER 43
MOTORBOAT NOISE

43.1(462A) Definitions
43.2(462A) Sound level limitation
43.3(462A) Serviceability

CHAPTER 44
SPECIAL EVENTS

44.1(321G,321I,462A) Definitions
44.2(321G,321I,462A) Applicability
44.3(321G,321I,462A) Permit required
44.4(321G,321I,462A) Permit conditions
44.5(321G,321I,462A) Application procedures
44.6(321G,321I,462A) Alternate dates
44.7(321G,321I,462A) Insurance coverage
44.8(321G,321I,462A) Fees
44.9(321G,321I,462A) Buildings or structures placed on ice during a special event
44.10(462A) Boating special events—registration exemptions
44.11(462A) Mississippi River or Missouri River
44.12(321G,321I,462A) Other Iowa Code provisions and permits
44.13(321G,321I,462A) Authority to cancel or stop an event
44.14(321G,321I,462A) Future special event permits
44.15(321G,321I,462A) Nonexclusive use of area
44.16(321G,321I,462A) Other special events

CHAPTER 45
BOAT MOTOR REGULATIONS

45.1(462A) Horsepower rating
45.2(462A) Alteration of horsepower rating
45.3(462A) Propulsion mechanism not in use

45.4(462A) Horsepower limitations on artificial lakes
45.5(462A) Artificial marshes

CHAPTER 46
ALL-TERRAIN VEHICLE AND SNOWMOBILE BONDING
46.1(321G) Bond required before issuance of title or registration

CHAPTER 47
VESSEL BONDING
47.1(462A) Bond required before issuance of title or registration

CHAPTER 48
INSPECTION OF PERMANENTLY MOORED VESSELS
48.1(462A) Purpose
48.2(462A) Definitions
48.3(462A) Inspection requirements
48.4(462A) Inspectors
48.5(462A) Statewide inspection contract
48.6(462A) Submission
48.7(462A) Notification to the commission

CHAPTER 49
OPERATION OF MOTOR VEHICLES IN MEANDERED
STREAMS, NAVIGABLE STREAMS AND TROUT STREAMS
49.1(462A) Purpose and intent
49.2(462A) Definitions
49.3(462A) Stream identification process
49.4(462A) Motor vehicle prohibition in meandered streams, trout streams and navigable streams
49.5(462A) Motor vehicle prohibition in meandered streams

CHAPTER 50
ALL-TERRAIN VEHICLE AND SNOWMOBILE
ACCIDENT REPORTS, TITLING, REGISTRATION AND NUMBERING
50.1(321G) Accident report
50.2(321G) Registration and titling—required forms
50.3(321G) All-terrain vehicle and snowmobile safety-education classes
50.4 Reserved
50.5(321G) Registration applied for card and proof of purchase
50.6(321G) Placement in storage
50.7(321G) Application for and placement of new or replacement vehicle identification number (VIN)
50.8(321G) Identification number
50.9(321G) Procedure for placement of registration decal
50.10(321G) Special certificates for dealers or manufacturers
50.11(321G) Dealer's annual report of expired registrations
50.12(321G) Monthly all-terrain vehicle reports by county recorders
50.13(321G) Monthly snowmobile vehicle reports by county recorders

TITLE V
MANAGEMENT AREAS AND PRACTICES

CHAPTER 51
GAME MANAGEMENT AREAS

51.1(481A) Definitions
51.2(481A) Jurisdiction
51.3(481A) Use of firearms
51.4(481A) Use of horses on game management areas
51.5(481A) Dogs prohibited—exception
51.6(481A) Use of blinds and decoys on game management areas
51.7(481A) Trapping on game management areas
51.8(481A) Motor vehicle restrictions
51.9(481A) Employees exempt
51.10(481A) Use of nontoxic shot on wildlife areas
51.11(481A) Rock climbing and rappelling
51.12(481A) Camping restrictions

CHAPTER 52
WILDLIFE REFUGES

52.1(481A) Established

CHAPTER 53
CONTROLLED HUNTING AREAS

53.1(481A) Definitions
53.2 Reserved
53.3(481A) Waterfowl hunting on Lake Odessa

CHAPTER 54
RESTRICTIONS ON INTRODUCTION AND REMOVAL OF PLANT LIFE

54.1(461A) Mushrooms and asparagus
54.2(461A) Fruit
54.3(461A) American ginseng
54.4(461A) Trees
54.5(461A) Aquatic plants

CHAPTER 55
NONPERMANENT STRUCTURES

55.1(461A) Ice fishing shelters

CHAPTERS 56 to 60
Reserved

TITLE VI
PARKS AND RECREATION AREAS

CHAPTER 61
STATE PARKS AND RECREATION AREAS

61.1(461A) Applicability
61.2(461A) Definitions
61.3(461A) Establishment of centralized reservation system operating procedures and policies
61.4(461A) Camping
61.5(461A) Rental facilities
61.6(461A) Vessel storage fees
61.7(461A) Restrictions—area and use

61.8(461A) Certain conditions of public use applicable to specific parks and recreation areas
61.9(461A) Mines of Spain hunting, trapping and firearms use
61.10(461A) After-hours fishing—exception to closing time
61.11(461A) Designated areas for after-hours fishing
61.12(461A) Vessels prohibited
61.13(461A) Severability
61.14(461A) Restore the outdoors program
61.15(461A,463C) Honey Creek Resort State Park

CHAPTER 62
STATE FOREST CAMPING

62.1(461A) Applicability
62.2(461A) Definitions
62.3(461A) Camping areas established and marked
62.4(461A) Campground reservations
62.5(461A) Camping fees and registration
62.6(461A) Camping restrictions
62.7(461A) Camping time limit
62.8(461A) Camping refused
62.9(461A) Firearms use prohibited
62.10(461A) Hours
62.11(461A) Horses and pets
62.12(461A) Noise

CHAPTER 63
KEG BEER RULES

63.1(111,123) Purpose
63.2(111,123) Applicability
63.3(111,123) Definitions
63.4(111,123) Prohibited areas
63.5(111,123) Procedure
63.6(461A,123) Deposit disposition
63.7(111,123) Responsibility agreement

CHAPTER 64
METAL DETECTORS USE IN STATE AREAS

64.1(461A) Definitions
64.2(461A) Use areas
64.3(461A) Archaeological/scientific studies
64.4(461A) Found items
64.5(461A) Lost item search by owner
64.6(461A) Tools used
64.7(461A) Digging limitations and restoration
64.8(461A) Disposal of litter

CHAPTER 65
FIREWORKS DISPLAYS—
STATE PARKS AND RECREATION AREAS

65.1(461A) Entities eligible for permits
65.2(461A) Application procedure
65.3(461A) Fireworks display procedures

CHAPTER 66
SAYLORVILLE MULTIUSE TRAIL

66.1(461A,481A) Applicability
66.2(456A,481A) Wildlife refuge
66.3(481A) Hunting and trapping restrictions
66.4(461A) Area use restrictions

CHAPTER 67
DEVELOPMENT AND MANAGEMENT OF RECREATION TRAILS
ON STATE FORESTS, PARKS, PRESERVES AND RECREATION AREAS

67.1(456A,461A) Applicability
67.2(456A,461A) Definitions
67.3(456A,461A) Purpose
67.4(456A,461A) Establishment of trails
67.5(456A,461A) Designation of recreation trails
67.6(456A,461A) Guidelines for trail location
67.7(456A,461A) Control of trail use
67.8(456A,461A) Use of designated trails

CHAPTERS 68 to 70
Reserved

TITLE VII
FORESTRY

CHAPTER 71
NURSERY STOCK SALE TO THE PUBLIC

71.1(456A,461A) Purpose
71.2(456A,461A) Procedures
71.3(456A,461A) Nursery stock prices

CHAPTER 72
TIMBER BUYERS

72.1(456A) Definitions
72.2(456A) Applicability of rules
72.3(456A) Forms

CHAPTER 73
FOREST AND FRUIT-TREE RESERVATIONS

73.1(427C,456A) Criteria for establishing and maintaining forest and fruit-tree reservations
73.2(427C,456A) County assessor's annual report on forest and fruit-tree reservations to the department of natural resources

CHAPTER 74
FOREST LAND ENHANCEMENT PROGRAM (FLEP)

74.1(461A) Purpose
74.2(461A) Definitions
74.3(461A) Project scope
74.4(461A) Availability of funds
74.5(461A) Forest land enhancement program areas
74.6(461A) Cost reimbursement

CHAPTER 75
Reserved

TITLE VIII
SEASONS, LIMITS, METHODS OF TAKE

CHAPTER 76
UNPROTECTED NONGAME

76.1(481A) Species

CHAPTER 77
ENDANGERED AND THREATENED PLANT AND ANIMAL SPECIES

77.1(481B) Definitions
77.2(481B) Endangered, threatened, and special concern animals
77.3(481B) Endangered, threatened, and special concern plants
77.4(481B) Exemptions

CHAPTER 78
GINSENG HARVESTING AND SALE

78.1(456A) Purpose
78.2(456A) Scope
78.3(456A) Definitions
78.4(456A) Season for legal harvest
78.5(456A) General prohibitions
78.6(456A) Ginseng permits
78.7(456A) Dealers—record keeping
78.8(456A) Dealer locations
78.9(456A) Certificates of origin
78.10(456A) Inspection
78.11(456A) Restrictions and prohibitions for harvesting wild ginseng
78.12(456A) Additional restrictions and prohibitions for wild ginseng
78.13(456A) Compliance with laws
78.14(456A) Violations of this chapter
78.15(456A) Possession
78.16(456A) Valuation
78.17(456A) Revocation of permits
78.18(456A) Reciprocity

CHAPTER 79
FISH STOCKING PROCEDURES AND FEES FOR PRIVATE WATERS

79.1(481A) Purpose
79.2(481A) Application procedures
79.3(481A) Fish stocks
79.4(481A) Fees

CHAPTER 80
SALVAGE OF FISH AND GAME

80.1(481A) Salvage
80.2(481A) Game killed by motor vehicle
80.3(481A) Confiscated fish or game

CHAPTER 81
FISHING REGULATIONS

81.1(481A) Seasons, territories, daily bag limits, possession limits, and length limits
81.2(481A) Exceptions to seasons and limits, set in 81.1(481A)

CHAPTER 82
COMMERCIAL FISHING

INLAND WATERS

82.1(482) Contract policy

MISSISSIPPI AND MISSOURI RIVERS

82.2(482) Commercial taking

CHAPTER 83
SCUBA AND SKIN SPEARING OF ROUGH FISH

83.1(481A) When permitted
83.2(481A) Prohibited areas
83.3(481A) Permitted equipment
83.4(481A) Prohibited equipment
83.5(481A) Diver's flag
83.6(481A) Employees exempt

CHAPTER 84
PROMISCUOUS FISHING

84.1(481A) General

CHAPTER 85
TROTLINES

85.1(481A) Trotlines

CHAPTER 86
TURTLES

86.1(481A,482) Taking

CHAPTER 87
MUSSEL REGULATIONS

87.1(481A) Seasons, areas, methods, species, limits

CHAPTER 88
FISHING TOURNAMENTS

88.1(462A,481A) Definition
88.2(462A,481A) Permit required
88.3(462A,481A) Application procedures
88.4(462A,481A) Permit conditions

CHAPTER 89
AQUACULTURE

89.1(481A) Approved aquaculture species
89.2(481A) Importation permit
89.3(481A) Disease-free certification

CHAPTER 90
AQUATIC INVASIVE SPECIES

90.1(456A) Definitions
90.2(456A) Aquatic invasive species
90.3(456A) Restrictions
90.4(456A) Infested waters

CHAPTER 91
WATERFOWL AND COOT HUNTING SEASONS

91.1(481A)	Duck hunting
91.2(481A)	Coots (split season)
91.3(481A)	Goose hunting
91.4(481A)	Closed areas
91.5(481A)	Canada goose hunting within closed areas
91.6(481A)	Youth waterfowl hunt

CHAPTER 92
MIGRATORY GAME BIRDS

92.1(481A)	General
92.2(481A)	Duck stamp
92.3(481A)	Hunting methods
92.4(481A)	Restrictions applicable to possession, tagging, and record-keeping requirements
92.5(481A)	Transportation within the state or between states
92.6(481A)	Wounded, live migratory game birds
92.7(481A)	Harvest information program (HIP)

CHAPTER 93
COMMERCIAL USE OF CAPTIVE-REARED WATERFOWL

93.1(481A)	General
93.2(481A)	Required markings
93.3(481A)	Definitions
93.4(484B)	Marked for shooting
93.5(481A)	Commercial sale of captive-reared waterfowl by a taxidermist

CHAPTER 94
NONRESIDENT DEER HUNTING

94.1(483A)	Licenses
94.2(483A)	Season dates
94.3(483A)	Shooting hours
94.4(481A)	Limits
94.5(483A)	Zones open to hunting
94.6(483A)	License quotas
94.7(483A)	Method of take
94.8(483A)	Application procedure
94.9(483A)	Transportation tag
94.10(481A)	Deer hunting season for severely disabled persons
94.11(481A)	Harvest reporting
94.12(481A)	January antlerless season

CHAPTER 95
GAME HARVEST REPORTING AND LANDOWNER-TENANT REGISTRATION

95.1(481A)	Harvest reporting system
95.2(481A)	Verifying eligibility for free landowner or tenant licenses

CHAPTER 96
PHEASANT, QUAIL AND GRAY (HUNGARIAN)
PARTRIDGE HUNTING SEASONS

96.1(481A)	Pheasant season
96.2(481A)	Gray (Hungarian) partridge season
96.3(481A)	Quail season

CHAPTER 97
COMMON SNIPE, VIRGINIA RAIL AND SORA, WOODCOCK AND RUFFED GROUSE HUNTING SEASONS

97.1(481A) Common snipe season
97.2(481A) Virginia rail and sora season
97.3(481A) Woodcock season
97.4(481A) Ruffed grouse season

CHAPTER 98
WILD TURKEY SPRING HUNTING

RESIDENT WILD TURKEY SPRING HUNTING

98.1(483A) General
98.2(483A) Means and method of take
98.3(483A) Procedures to obtain licenses
98.4(483A) Transportation tag
98.5(483A) Eligibility for free landowner/tenant turkey licenses
98.6(483A) Youth spring wild turkey hunt
98.7(481A) Harvest reporting
98.8 Reserved

NONRESIDENT WILD TURKEY SPRING HUNTING

98.9(483A) General
98.10(483A) Zones open to hunting
98.11(483A) License quotas
98.12(483A) Means and method of take
98.13(483A) Application procedure
98.14(483A) Transportation tag
98.15(481A) Harvest reporting

CHAPTER 99
WILD TURKEY FALL HUNTING

99.1(481A) General
99.2(481A) Licenses
99.3(481A) Seasons
99.4(481A) Zones
99.5(481A) Quotas
99.6(481A) Daily, season, and possession bag limits
99.7(481A) Shooting hours
99.8(481A) Means and method of take
99.9(481A) Procedures to obtain licenses
99.10(481A) Transportation tag
99.11(481A) Eligibility for free landowner/tenant turkey licenses
99.12(481A) Harvest reporting

CHAPTER 100
CROW AND PIGEON REGULATIONS

100.1(481A) Crow season
100.2(481A) Pigeons

CHAPTER 101
FALCONRY REGULATIONS

101.1(481A) Falconry regulations
101.2(481A) Facilities and equipment

101.3(481A) Taking and possession provision
101.4(481A) Annual reports
101.5(481A) Other provisions
101.6(481A) Compliance

CHAPTER 102
FALCONRY REGULATIONS FOR HUNTING GAME

102.1(481A) General
102.2(481A) Migratory bird regulations
102.3(481A) Small game
102.4(481A) Means and methods of take
102.5(481A) Exclusions

CHAPTER 103
MOBILE RADIO TRANSMITTERS

103.1(481A) Definitions
103.2(481A) Falconry
103.3(481A) Hunting dogs

CHAPTER 104
WILDLIFE IMPORTATION, TRANSPORTATION AND DISEASE MONITORING

104.1(481A) Definitions
104.2(481A) Chronic wasting disease in captive cervids
104.3(481A) Chronic wasting disease in captive cervids—herd monitoring program
104.4(481A) Identification of animals
104.5(481A) Supervision of the CCWDSI program
104.6(481A) Surveillance procedures
104.7(481A) Official cervid CWD tests
104.8(481A) Investigation of CWD affected animals identified through surveillance
104.9(481A) Duration of quarantine
104.10(481A) Herd plan
104.11(481A) Identification and disposal requirements
104.12(481A) Cleaning and disinfecting
104.13(481A) Methods for obtaining certified CWD cervid herd status
104.14(481A) Recertification of CWD cervid herds
104.15(481A) Movement into a certified CWD cervid herd
104.16(481A) Movement into a monitored CWD cervid herd
104.17(481A) Recognition of monitored CWD cervid herds
104.18(481A) Recognition of certified CWD cervid herds
104.19(481A) Intrastate movement requirements
104.20(481A) Import requirements
104.21(481A) Prohibited movement of cervid carcasses
104.22(481A) Inspection

CHAPTER 105
DEER POPULATION MANAGEMENT ZONES

105.1(481A) Purpose
105.2(481A) Definitions
105.3(481A) Special deer management zones
105.4(481A) State parks and recreation areas
105.5(481A) Urban deer management zones
105.6(481A) Iowa Army Ammunition Plant (IAAP) deer management zone

105.7(481A) County park deer management zones
105.8(481A) Special deer management zones on private land

CHAPTER 106
DEER HUNTING BY RESIDENTS

106.1(481A) Licenses
106.2(481A) Season dates
106.3(481A) Shooting hours
106.4(481A) Limits
106.5(481A) Areas closed to hunting
106.6(481A) Paid deer license quotas and restrictions
106.7(481A) Method of take
106.8(481A) Procedures to obtain licenses
106.9(481A) Transportation tag
106.10(481A) Youth deer and severely disabled hunts
106.11(481A) Deer depredation management
106.12(481A) Eligibility for free landowner/tenant deer licenses
106.13(481A) Harvest reporting

CHAPTER 107
RABBIT AND SQUIRREL HUNTING

107.1(481A) Cottontail rabbit season
107.2(481A) Jackrabbit season
107.3(481A) Squirrel season

CHAPTER 108
MINK, MUSKRAT, RACCOON, BADGER, OPOSSUM, WEASEL,
STRIPED SKUNK, FOX (RED AND GRAY), BEAVER, COYOTE, RIVER OTTER,
BOBCAT, GRAY (TIMBER) WOLF AND SPOTTED SKUNK SEASONS

108.1(481A) Mink, muskrat and weasel
108.2(481A) Raccoon, badger, opossum and striped skunk
108.3(481A) Red and gray fox
108.4(481A) Beaver
108.5(481A) Coyote
108.6(481A) Gray (timber) wolf and spotted skunk
108.7(481A) River otter and bobcat
108.8(481A) Accidental capture of a river otter or bobcat during a closed season
108.9(481A) Trapping restrictions

CHAPTER 109
GROUNDHOG SEASON

109.1(481A) Groundhog

CHAPTER 110
TRAPPING LIMITATIONS

110.1(481A) Public roadside limitations—snares, body-gripping, and conibear type traps
110.2(481A) Snares
110.3(481A) Body-gripping and conibear type traps
110.4(481A) Foothold and leghold traps
110.5(481A) Removal of animals from traps and snares
110.6(481A) Trap tag requirements
110.7(481A) Colony traps

CHAPTER 111
SCIENTIFIC COLLECTING AND WILDLIFE REHABILITATION

111.1(481A) Definitions
111.2(481A) Scientific collector's license
111.3(481A) Wildlife salvage permit
111.4(481A) Educational project permit
111.5(481A) Wildlife rehabilitation permit
111.6(481A) Application qualifications
111.7(481A) Evaluation committee
111.8(481A) Disposition of animals
111.9(481A) General conditions for permits

CHAPTER 112
HUNTING PRESERVES

112.1(484B) Definitions
112.2(484B) Hunting preserve operator's license
112.3(484B) Land leases required
112.4(484B) Boundary signs required
112.5(484B) Fencing required—ungulates
112.6(484B) Records and annual report
112.7(484B) Game bird transportation tags
112.8(484B) Ungulate transportation tags
112.9(484B) Processed game birds
112.10(484B) Processed ungulates
112.11(484B) Health requirements—game birds and ungulates
112.12(484B) General conditions for permits

CHAPTER 113
RESTITUTION FOR POLLUTION CAUSING INJURY TO WILD ANIMALS

113.1(481A) Applicability
113.2(481A) Definitions
113.3(481A) Liability to the state
113.4(481A) Assessment
113.5(481A) Compensation

CHAPTER 114
NUISANCE WILDLIFE CONTROL

114.1(456A) Nuisance wildlife control program
114.2(456A) Definitions
114.3(456A) Nuisance wildlife control operator's permit
114.4(456A) Application requirements
114.5(456A) Nuisance wildlife control operator's guidebook
114.6(456A) Nuisance wildlife control operator's test and interview
114.7(456A) Records and record-keeping requirements
114.8(456A) Annual activity report
114.9(456A) Permit renewal
114.10(456A) Helper
114.11(456A) Capture methods and trap tagging
114.12(456A) Endangered and threatened wildlife species
114.13(456A) Special Canada goose control permits
114.14(456A) Disposition of captured nuisance wildlife
114.15(456A) General conditions for permits

114.16(456A) Permit refusal
114.17(456A) Penalties

CHAPTER 115
WHITETAIL HUNTING PRESERVES

115.1(81GA,SF206) Definitions
115.2(81GA,SF206) Hunting preserve operator's registration
115.3(81GA,SF206) Boundary signs required
115.4(81GA,SF206) Fencing required
115.5(81GA,SF206) Records and annual report
115.6(81GA,SF206) Whitetail transportation tags
115.7(81GA,SF206) Processed whitetail
115.8(81GA,SF206) Health requirements—whitetail
115.9(81GA,SF206) Chronic wasting disease testing
115.10(81GA,SF206) Positive chronic wasting disease test results
115.11(81GA,SF206) General conditions for registration

CHAPTER 116
HELP US STOP HUNGER PROGRAM ADMINISTRATION

116.1(483A) Purpose
116.2(483A) Definitions
116.3(483A) Restrictions
116.4(483A) HUSH council
116.5(483A) Duties of the department
116.6(483A) Duties of venison distributor
116.7(483A) Meat processors
116.8(483A) Partnerships with other organizations

CHAPTER 12
CONSERVATION EDUCATION

DIVISION I
RESOURCE ENHANCEMENT AND PROTECTION CONSERVATION EDUCATION PROGRAM (REAP)

571—12.1(455A) Purpose. The purpose of these rules is to define procedures for the administration of funds within the conservation education program board account for production and revision of conservation education materials, and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The conservation education program shall serve Iowa citizens by providing effective curricula, program materials and educator stipends to increase environmental awareness and understanding of stewardship, and shall enhance natural resources. Expenditure of funds from the conservation education program board account shall be in accordance with this policy.

571—12.2(455A) Conservation education program policy. The conservation education program board shall constitute a long-term integrated effort to support conservation education for Iowa educators and students. To support this policy, the board may establish guidelines from time to time to direct applicants to priority areas for funding and shall give preference to grants that meet these guidelines. The board may provide funding for activities that expand the impact of the project and provide accessibility for widespread adoption of programs for implementation by others. The board may provide funding for tracking of project implementation and evaluation.

571—12.3(455A) Conservation education program board. A conservation education program board is created in the department. The board shall have five members appointed as follows:

1. One member appointed by the director of the department of education.
2. One member appointed by the director of the department of natural resources.
3. One member appointed by the president of the Iowa association of county conservation boards.
4. One member appointed by the Iowa association of naturalists.
5. One member appointed by the Iowa conservation education council.

571—12.4(455A) Definitions.

"Board" means the resource enhancement and protection (REAP) conservation education program board.

"Conservation education programs" means programs developed for formal (K-12 students), nonformal (preschool, adult and continuing education) and higher education (postsecondary and adult) programs, within the subject areas of natural resource conservation and environmental protection.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"Educator" means any person who teaches environmental/conservation education. This may apply to certified teachers, governmental or private naturalists or education specialists, or others so determined by the board.

"Environmental/conservation education materials" means materials that are developed or produced that provide knowledge, skills, processes and strategies that enhance Iowa citizens' understanding of natural resources conservation and environmental issues.

"Stipends for Iowa educators who participate in innovative conservation education programs" may include tuition cost, acceptable food and lodging costs, substitute teacher costs, mileage expenses or separate allowances when applicable for educators to attend board-approved environmental/conservation education workshops, in-service programs and conferences, and other costs as approved by the board.

571—12.5(455A) Eligibility for funds. In years in which funds are made available, grant applications may be submitted by institutions of higher learning; government agencies, including local school

districts; nonpublic schools; area education agencies; organizations; and individuals with an Iowa residence. Preference shall be given to Iowa participants.

571—12.6(455A) Grant applications, general procedures.

12.6(1) Applications for all grant programs shall be made on forms provided by the department. The original and five copies shall be submitted by the deadlines specified in subsequent rules of this chapter or as otherwise published by the department.

12.6(2) Applications shall be made in sufficient detail as to clearly describe the scope of the project including the following:

a. Applicant identification (applicant's name and address).

b. Project summary and demonstration of need.

c. Program goals, objectives, time lines, and transferability, and who is responsible.

d. Documentation of assurances and letters of community support, including cooperating agencies.

e. Project budget (administrative/indirect costs not to exceed 10 percent of total award).

f. Project management.

g. A plan for evaluation.

Any application which is not complete at the time of the specified submittal deadline shall not be considered for funding. The proposals shall be submitted to the department.

12.6(3) Applications shall be postmarked on or before May 15 for the first application period and on or before November 1 for the second application period. Upon receipt, the proposals will be reviewed to determine whether all required materials have been included and whether the proposal falls within the department's guidelines. Failure to meet these criteria will result in disqualification of the proposal.

12.6(4) Joint applications are permitted. One entity must serve as the primary applicant. Joint projects sponsored by entities, e.g., an organization or institution, area education agency, competing for funds from different resource enhancement and protection (REAP) accounts are allowable. Applications must clearly spell out the respective shares of project costs to be derived from various REAP accounts if the project is approved for funding. Any cooperative agreement between joint applicants must be provided as a part of the application.

12.6(5) Similar development projects. An application for a conservation education program grant may serve more than one target population (e.g., scouting and K-6 classrooms).

571—12.7(455A) Conflict of interest. If a project is submitted to the board by an agency, institution, conservation board, or private conservation interest, one of whose members or employees are on the board or the review and selection committee, that member or employee shall not participate in discussion on or ranking of that particular project.

571—12.8(455A) Criteria. Preference will be given, in formal and informal education programs, to materials capable of being infused in multiple curricular areas. Also, preference will be given to projects that encourage conservation stewardship. Proposals shall include, but not be limited to, the following types of information that can be found in the REAP/conservation education program (CEP) applications and procedures manual.

12.8(1) *Statement of need.* This part of the proposal identifies the target audience and describes how this audience will be served. The statement of need contains evidence or research that a need for such a project exists, explains how stated need relates to REAP/CEP priorities and guidelines, and shows interdisciplinary components.

12.8(2) *Goals, objectives, activities.* This part of the proposal describes how the project will address the environmental education goals identified by the writer, how workable or appropriate the project is to the audience, and activity time lines. This part also describes how the project incorporates collaboration and networking, the potential of the project to be implemented elsewhere, and how the project demonstrates innovative and creative ideas and strategies.

12.8(3) *Funding and budget considerations.* This part of the proposal describes a realistic and cost-effective budget, shows ratio of total budget to number of people directly served, and shows that the project budget meets expense eligibility stated in subrule 12.9(6).

12.8(4) *Evaluation.* This part of the proposal describes evaluation tools that the applicant will use to show how well the project's goals and objectives have been met and how well the audience meets objectives. This part identifies strategies, milestones, and tools that will be used to monitor the project and describes how monitoring will be used to strengthen the project and how information will be disseminated.

571—12.9(455A) Grantee responsibilities.

12.9(1) *Timely completion of projects.* Projects are expected to be completed in a 12-month time period; however, up to 18 months may be allowed by the board for grants difficult to accomplish in 12 months. The board may consider extending the time period of a grant upon request.

12.9(2) *Record keeping and retention.* Grant recipients shall keep adequate records relating to the administration of a project, particularly all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

12.9(3) *Midterm and final reports.* Grantees shall provide midterm and final reports that include information detailing progress toward goals and objectives, expenditures and services on forms provided for those reports. The reports shall clearly identify the status of fundraising relevant to the approved project and problems that may cause a delay in completing the project within the approved project period. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. Grants are considered active until the board notifies the grantee that the grant has been terminated or completed by the terms of the grant. At the completion of the project and prior to the final payment, a final written report shall be submitted by the grantee to the board. The final 10 percent payment shall be withheld pending this report, which shall include a 75- to 100-word summary of project results. This summary will be posted on the state environmental education Web site. No new awards shall be made for continuation programs when there are delinquent reports from prior grants.

12.9(4) *Contract revisions.* The grantee shall immediately inform the board of any revisions in the project budget in excess of 10 percent of a line item. The board and the grantee may negotiate a revision to the contract to allow for expansion or modification of services, but shall not increase the total amount of the grant. The board retains the authority to approve or deny contract revisions.

12.9(5) *Nonapplication of copyright.* Program materials developed from resource enhancement and protection funds for conservation education materials shall bear the REAP logo. However, materials developed under this grant shall not be copyrighted by the grantee unless the board gives permission.

12.9(6) *Restrictions.* Funds allocated under this chapter shall not be used for out-of-state travel or equipment, such as typewriters, computers, and hardware, or for construction, renovation, or remodeling costs unless specifically approved by the board.

571—12.10(455A) Board review and approval. The board or its designee shall review and rank projects for funding, and funds shall be awarded on a competitive basis. If delegated, the reviewing, scoring and ranking of projects will be presented to the board as recommendations. The board may approve or deny funding for any project or part thereof.

12.10(1) In each year that funds are made available by the Iowa legislature, payments shall be as follows:

a. For grant periods in excess of 90 days, up to 50 percent shall be paid at the beginning of the grant period, up to 40 percent at the midpoint of the grant period, and the balance upon successful completion as determined by the board.

b. For grant periods of fewer than 90 days, 75 percent shall be paid at the beginning of the grant period and the balance at successful completion as determined by the board.

12.10(2) The board shall notify successful applicants and shall provide a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the department prior to the award of any funds under this program.

571—12.11(455A) Waivers of retroactivity. Normally, grant program developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be issued in writing by the board. Receipt of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications.

571—12.12(455A) Penalties. Whenever any property, real or personal, acquired or developed with resource enhancement and protection funds passes from the control of the grantee or is used for purposes other than the approved project purpose, it will be considered an unlawful use of the funds. If a grantee desires to use the approved funds for a purpose other than the approved project purpose, the grantee shall seek an amendment to the project purpose by following the provisions of subrule 12.9(4). The board shall notify the grantee of any apparent violation.

571—12.13(455A) Remedy. Funds used unlawfully, without authorization, or for other than the approved project purpose shall be returned to the department within the period specified by the board or director. The remedies provided in this rule are in addition to others provided by law.

571—12.14(455A) Termination for convenience. The contract may be terminated in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the future expenditure of funds. The parties shall agree upon the termination conditions, including the effective date, and, in the case of partial terminations, the portion to be terminated. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

571—12.15(455A) Termination for cause. The contract may be terminated in whole or in part at any time before the date of completion whenever it is determined by the board that the grantee has failed to comply substantially with the conditions of the contract. The grantee shall be notified in writing by the department of the reasons for the termination and the effective date. The department shall administer the conservation education grants contingent upon their availability. If there is a lack of funds necessary to fulfill the fiscal responsibility of the conservation education grants, the contracts shall be terminated or renegotiated. The board may terminate or renegotiate a contract upon 30 days' notice when there is a reduction of funds by executive order. The grantee shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible.

12.15(1) *Failure to initiate or complete project.* Failure to initiate or complete the project in a timely manner shall be cause for termination of the project by the board. The grantee shall return unused grant funds at the time of termination.

12.15(2) *Ineligibility.* Whenever the board determines that a grantee is in violation of these rules, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the board.

571—12.16(455A) Responsibility of grantee at termination. Within 45 days of the termination, the grantee shall supply the department with a financial statement detailing all costs up to the effective date of the termination. If the grantee expends money for other than specified budget items approved by the board, the grantee shall return moneys for unapproved expenditures.

571—12.17(455A) Appeals. Appeals to the decisions on grant awards shall be filed with the director of the department. The letter of appeal shall be filed within ten working days of receipt of notice of decision and shall be based on a contention that the process was arbitrary; conducted outside of statutory authority; violated state or federal law, policy, or rule; did not provide adequate public notice or was

altered without adequate public notice; or involved conflict of interest by staff or board members. The director of the department shall notify the board of the appeal. The board may submit evidence in support of its decision within ten days of notice from the director. The director shall issue a decision within a reasonable time following receipt of the appeal.

571—12.18 and **12.19** Reserved.

The rules in this division are intended to implement Iowa Code sections 455A.19 and 455A.21.

DIVISION II
RECREATION EDUCATION COURSES

PART I
VOLUNTEER INSTRUCTOR CERTIFICATION AND
DECERTIFICATION PROCEDURES

571—12.20(321G,321I,462A,483A) Purpose. Pursuant to Iowa Code sections 321G.23, 321I.25, 462A.1 and 483A.27(4), these rules set forth curriculum and course standards for the department's recreation education courses and provisions for certification of volunteer instructors to teach the courses.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.21(321G,321I,462A,483A) Definitions. For the purpose of this division:

"Certified instructor" means a person who meets all criteria in rule 571—12.23(321G,321I,462A,483A) and the specifics contained in each education program's Instructor Policies and Procedures Manual and who wishes to voluntarily teach an education course.

"Department" means the department of natural resources.

"DNR online training registration and tracking system" means the web-based application that tracks student data, allows students to register for courses, allows certified instructors to list their course offerings and to track volunteer hours and program details, and displays downloadable PDF files.

"Education course" means the department's bow hunter, fur harvester, snowmobile, all-terrain vehicle (ATV), boating, snow groomer operator, and hunter safety and ethics courses.

"Instructor applicant" means a person who has applied to become a certified volunteer instructor for one of the department's education courses.

"Managed Internet course" means a course offered via the Internet which contains a protocol that ensures that the person registering for the course is the person taking the test and includes a progressive sequence for the presentation of course material.

"Program coordinator" means the person assigned from the snowmobile, all-terrain vehicle, and boating programs to coordinate instructor certification and development activities, develop curriculum standards for the programs, conduct outreach for the programs, train volunteer instructors and evaluate their skills, and serve as the primary contact for information about the programs.

"Recreational safety programs supervisor" means the person charged by the department with the coordination and management of the recreation education programs, including personnel employed by the department to work with these programs.

"Recreation safety officer" means a peace officer employed by the department who has received specialized training in managing and overseeing the recreation education programs of the department, including training volunteer instructors and evaluating their skills.

"Student" means a person who wishes to enroll or has enrolled in an education course.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.22(321G,321I,462A,483A) Certified instructor application process.

12.22(1) *Application procedures.*

a. The instructor applicant must request an application by contacting a program coordinator, a recreation safety officer, or the recreational safety programs supervisor.

b. The instructor applicant must provide all information requested on the application or the department may reject the application.

c. The application will remain on file until the instructor applicant meets all the requirements in rule 571—12.23(321G,321I,462A,483A).

d. Once the instructor applicant successfully completes all required training and meets all required qualifications, the program coordinator, recreation safety officer, or recreational safety programs supervisor shall document that all certification requirements have been met and shall issue a certified instructor identification card to the instructor.

12.22(2) *Acceptance of certified instructor applications.* If the number of existing certified instructors in one or more of the education courses meets the demand for those courses, based on student enrollment, the department may choose not to accept new applications for the specified education program.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.23(321G,321I,462A,483A) Requirements for instructor certification.

12.23(1) *Minimum requirements.* The conditions listed in this rule must be satisfied before an instructor applicant may become a certified instructor. Failure to meet these requirements shall result in the denial of the application. The instructor applicant will be notified of the denial by the program coordinator or recreational safety programs supervisor. The instructor applicant must:

a. Submit an application as provided by the department.

b. Be at least 18 years of age.

c. Attend and pass an instructor training and certification course administered by the department and described as follows:

(1) ATV education program. The instructor training and certification course for the ATV education program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, education course material, teaching techniques, and criteria for evaluating the performance of student skills and requires completion of the education course and an apprenticeship.

(2) Boating education program. The instructor training and certification course for the boating education program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, course material, criteria for evaluating the performance of student skills, and teaching techniques and requires completion of the student course and instruction of the course under the direction of department representatives.

(3) Hunter safety and ethics education program. The instructor training and certification course for the hunter safety and ethics program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, education course material, teaching techniques, and criteria for evaluating the performance of student skills and requires completion of the education course and an apprenticeship.

(4) Bow hunter education program. The instructor training and certification course for the bow hunter education program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, education course material, teaching techniques, and criteria for evaluating the performance of student skills and requires completion of the education course and an apprenticeship.

(5) Fur harvester education program. The instructor training and certification course for the fur harvester education program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, education program material, teaching techniques, and criteria for evaluating the performance of student skills and requires completion of the education program and an apprenticeship.

(6) Snowmobile education program. The instructor training and certification course for the snowmobile education program reviews policies and procedures of the department as contained in these rules and the specifics of the program, paperwork required by the department, education course materials, skills that pertain to administering the student examination, and teaching techniques and requires completion of an apprenticeship.

(7) Snow groomer operator education program. The training for the snow groomer operator program teaches the basics of snow science, best practices of equipment operation, documentation requirements, liability issues, insurance coverage, and the requirements of the equipment agreement that is in place between the individual club and the department and requires completion of an apprenticeship.

12.23(2) *Apprenticeship.* The instructor applicant must complete an apprenticeship for the specific education program.

a. *ATV education program.* The apprenticeship requirement for the ATV education program consists of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students.

b. *Boating education program.* The apprenticeship requirement for the boating education program consists of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students.

c. *Hunter safety and ethics education program.* The apprenticeship requirement for the hunter safety and ethics education program consists of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students. The apprenticeship may be completed during the instructor training and certification course or within one year of attending the course.

d. *Bow hunter education program.* The apprenticeship requirement for the bow hunter education program consists of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students.

e. *Fur harvester education program.* The apprenticeship requirement for the fur harvester education program consists of either teaching a simulated class to other instructor applicants or assisting a certified instructor to prepare and present an education course to students.

f. *Snowmobile education program.* The apprenticeship requirement for the snowmobile education program consists of assisting a certified instructor to prepare and present an education course to students.

g. *Snow groomer operator education program.* The apprenticeship requirement for the snow groomer operator education program consists of assisting a certified instructor to prepare and present an education course to operator applicants.

12.23(3) *Background check.* The instructor applicant must authorize a background check that includes, but may not be limited to, a criminal history check. A record of a felony conviction will disqualify the instructor applicant. A record of a serious or aggravated misdemeanor within the last three years will disqualify the instructor applicant.

12.23(4) *Fish and wildlife violation check (hunting, fishing, and trapping).* The instructor applicant must authorize a fish and wildlife violation check. The instructor applicant may be disqualified if the instructor applicant has accumulated any habitual offender points pursuant to rule 571—15.6(483A) within the last five years or had a license suspended by a court of law or the department.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.24(321G,321I,462A,483A) Certified instructor responsibilities and requirements.

12.24(1) A certified instructor has the following responsibilities:

a. To follow all policies and procedures as set forth by the department for the specified education program.

b. To sign an acknowledgment form confirming receipt of the department's policies and procedures. The certified instructor is ineligible to begin teaching an education course until the acknowledgment form is signed and filed with the department. Any updates to the policies and procedures shall be provided in writing to the certified instructor, and an additional acknowledgment form must be signed and filed with the department. Failure to file a subsequent acknowledgment form with the department invalidates the instructor's certification.

c. To assist in the recruitment and training of additional certified instructors.

d. To recruit students for and train students in the education course.

e. To actively promote the education program in the instructor's county and to publicize each new education course. A course must be posted at least 30 days prior to the start date of the course.

f. To maintain order and discipline in the classroom and outdoor classroom at all times.

g. To accurately fill out forms and reports required by the department for the accurate input and upkeep of the DNR online training registration and tracking system's records, or paper forms if applicable.

h. To teach the education course as prescribed by the department.

12.24(2) A certified instructor must teach a minimum of one course every two years. If this requirement is not met, the instructor's certification may be revoked after notification by certified mail. If an instructor's certification is revoked due to inactivity, the instructor may reapply to become a certified instructor pursuant to rule 571—12.22(321G,321I,462A,483A). Based upon the period of inactivity, some of the requirements in rule 571—12.23(321G,321I,462A,483A) may be waived by the program coordinator or recreational safety programs supervisor.

12.24(3) A certified instructor must attend one continuing education instructor workshop every two years.

12.24(4) A certified instructor shall represent the department in a positive manner that supports the department's goals and shall avoid even the appearance of impropriety while instructing students.

12.24(5) A certified instructor must teach the education course with another adult present unless the certified instructor obtains prior approval from the department. It is the department's preference that the certified instructor is assisted by another department-certified instructor, but a noncertified assistant over 18 years of age may assist so long as the noncertified assistant does not directly teach the students substantive issues of the course. The person assisting the certified instructor must meet the same standards and expectations for character and behavior as the department has for its instructors. The certified instructor is responsible for the conduct of the noncertified assistant. The certified instructor is subject to suspension or revocation of certification based upon the actions of the noncertified assistant.

If the course is taught without another adult present, notification to the program coordinator, recreation safety officer, or recreational safety programs supervisor must be made and authorization of the course must be given by the department in writing prior to holding the class. A parent or legal guardian of a student in the class who is present as a direct result of the student's participation is not eligible to assist with the class.

This subrule does not apply to a conservation officer or any other department representative who is teaching an education course alone.

12.24(6) A certified instructor shall not use private residences for classes, and shall limit instruction to public buildings or facilities unless a private, nonresidence venue is approved beforehand in writing by the program coordinator, recreation safety officer, or recreational safety programs supervisor.

12.24(7) All recreation education courses shall be made available to the public except for special circumstances that are preapproved by the department, such as courses being held in conjunction with schools, camps, and other special events.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.25(321G,321I,462A,483A) Grounds for revocation or suspension of instructor certification. The department may, at any time, seek to revoke or suspend the instructor certification of any person who:

1. Fails to meet the instructor responsibilities and requirements as outlined in rule 571—12.24(321G,321I,462A,483A).

2. Fails to follow the policies and procedures of the department.

3. Falsifies any information that may be required by the department. Falsifying information is understood to mean purposefully supplying information that is inaccurate or misleading or the intentional omission of information.

4. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.

5. Is convicted of or forfeits a bond for any fish and game, snowmobile, ATV, or navigation violation of this state or any other state. Anyone who has a privilege to operate a motor vehicle

suspended, barred, or revoked shall not be eligible to be an instructor for the snowmobile, ATV, or snow groomer operator education programs.

6. Uses profanity or inappropriate language, such as any type of sexist or racial references or generalities.

7. Engages in the physical punishment of a student, including the use of unreasonable or unnecessary physical force or physical contact made with the intent to cause pain, or any type of indecent contact with a child as defined by the Iowa Code.

8. Participates in a course while under the influence of alcohol or any illegal drug or while ingesting prescription medication in a manner contrary to the dosing directions given by the prescribing physician.

9. Has substantiated complaints filed against the instructor by the public, department personnel, or another certified instructor.

10. Fails to meet the requirements in subrule 12.24(2) or 12.24(3).

11. Is under investigation for committing, is in the process of a judicial proceeding based on the allegation of committing, or is convicted of committing a felony or an aggravated or serious misdemeanor as defined in the statutes of this state or another state. Every certified instructor is subject to a criminal history check and conservation violation check at any time during the instructor's tenure as an instructor.

12. Receives compensation directly or indirectly from students for time spent preparing for or participating in an education course.

13. Teaches an education course without another adult present without prior department approval.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.26(321G,321I,462A,483A) Temporary suspensions and immediate revocations of instructor certifications.

12.26(1) Any complaint made against a department-certified instructor will be taken seriously and will be investigated by a program coordinator, a recreation safety officer, or a conservation officer. If convincing evidence exists that a certified instructor engaged in any of the activities listed in rule 571—12.25(321G,321I,462A,483A), the instructor's certification will be temporarily suspended. A letter detailing the reason(s) for the instructor's certification suspension will be sent via certified mail to the last-known address of the instructor. The letter will detail the length of the suspension and any corrective action to be taken by the instructor before the instructor's certification is reinstated.

12.26(2) At the conclusion of the department's investigation, any certified instructor who is found to have engaged in the activities listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "3," "5," "7," "8," "11," or "12," shall immediately have the instructor's certification revoked. In the event that an instructor's certification is revoked, rule 571—12.29(321G,321I,462A,483A) shall apply.

12.26(3) At the conclusion of the department's investigation, if a certified instructor is found to have exercised bad judgment while teaching a class, failed to complete paperwork in a timely and proper manner, or engaged in risky or unsafe behavior or in an activity listed in rule 571—12.25(321G,321I,462A,483A), numbered paragraph "4," "6," "9," or "13," the suspension shall be exercised at the department's discretion based upon the nature and seriousness of the misconduct.

12.26(4) For the hunter safety and ethics education program, bow hunter education program, and fur harvester education program, the results of the department's investigation shall be supplied to the Iowa Hunter Education Instructor Association (IHEIA), which shall review the results and supply a disciplinary recommendation to the department. The department shall consider IHEIA's recommendation when exercising its discretion to suspend or revoke the instructor's certification, based upon the nature and seriousness of the misconduct.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.27(321G,321I,462A,483A) Termination of certification. Any certified instructor has the right, at any time, to voluntarily terminate the instructor's certification. If a certified instructor voluntarily terminates the certification or the instructor's certification is terminated by the department,

the instructor must return to the department the certification card and all materials that were provided to the individual.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.28(321G,321I,462A,483A) Compensation for instructors. Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual, course-related expenses involving facilities, meals, or materials other than those provided by the department. All certified instructors shall keep all records, bills, receipts, etc., relating to student payments for at least one year after the course and shall submit such documents to the department upon request.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.29(321G,321I,462A,483A) Hearing rights. If the department seeks to revoke an instructor certification pursuant to rule 571—12.26(321G,321I,462A,483A), the department shall provide to the certified instructor written notice of the intent to revoke the certification as provided in Iowa Code chapters 17A and 455A, and Iowa Administrative Code 561—Chapter 7. If the certified instructor requests a hearing, it shall be conducted in accordance with Iowa Administrative Code 561—Chapter 7.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.30 Reserved.

PART II
RECREATION EDUCATION PROGRAMS

571—12.31(321I) ATV education program.

12.31(1) For the ATV education program, the department has developed a rider-based course designed to meet the statutory requirement to provide rider education and instructor development as provided in Iowa Code section 321I.25.

12.31(2) Reciprocity. The department also recognizes safety courses taught by ATV Safety Institute (ASI)-certified instructors. Students who successfully complete this course are not required to take any additional training or testing from the department and are eligible to receive an education card issued by the department upon proof of successful completion of the course from the ASI-certified instructor and the payment of the $5 certification fee.

12.31(3) The department's ATV Education Program Skills Course is approximately four to six hours in length and is designed to be completed in one day. The education course is designed to teach ATV riders the principles and behaviors of safe and responsible ATV riding. The education course consists of both lecture and riding lessons.

12.31(4) The following criteria apply to the ATV education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday.

b. A student successfully completes the education course by demonstrating proficiency in the riding skills taught in the course. Students who are not able to demonstrate safe riding skills will not earn an education certificate.

c. The cost of the education course is $25 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Payment shall be made by check or money order made payable to the DNR. Course fees are nonrefundable.

d. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact the program coordinator, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

e. Students must provide their own protective riding gear and an ATV properly sized for the student. "Properly sized" means the student can comfortably reach all of the controls on the machine and can operate them. Students must also be of sufficient body weight to be able to maintain safety on the machine by shifting their weight during the training. The student must wear a helmet and protective eyewear at all times when the student is operating an ATV. The ATV must be in good working order, equipped with a proper muffler, and have current registration if the class is taught on public land as required by Iowa Code section 321I.3. If the class is held on private land, the registration requirement is not applicable. If the machine being used by the student is not required to have a recreation-use registration by statute, the registration requirement is not applicable and the lead instructor will put a placard on the machine to be used during the class indicating the exception. Students whose ATVs do not meet the requirements of this paragraph or whose ATVs are not properly sized will not be allowed to participate in the education course.

12.31(5) The department will establish requirements and standards for curriculum, security protocol, and managed delivery for an online education offering. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.32(321G) Snowmobile education program.

12.32(1) For the snowmobile education program, the department has developed an education course designed to meet the statutory requirement in Iowa Code section 321G.23 to provide rider education and instructor development.

12.32(2) The education course is approximately eight hours in length, consists solely of lecture, and is designed to be completed in one day.

12.32(3) The following criteria apply to the snowmobile education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn an education certificate.

c. A home study course may be offered at the discretion of the department. The home study packet will contain the same written material provided in the classroom-based setting. An attestation form must be signed by a parent or guardian stating that the student completed the work. A student completing a home study course must pass a written examination with 80 percent accuracy in order to earn the education certificate.

d. The cost of the education course, for both the instructor-led class and the home study option, is $10 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Home study students must mail in payment with their completed course paperwork. Payment shall be made by check or money order made payable to the DNR. Course fees are nonrefundable.

e. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact the program coordinator, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

12.32(4) The department will establish requirements and standards for curriculum, security protocol, and managed delivery. Only vendors that have entered into a memorandum of understanding with the department will be allowed to offer an online course which results in the issuance of a department

education certificate. Vendors will be allowed to charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.33(462A) Boating education program.

12.33(1) In accordance with Iowa Code section 462A.1, the goal of the boating education program and education course is to promote safe and responsible boating practices.

12.33(2) Reciprocity. The department also recognizes safety courses taught by United States Coast Guard Auxiliary- and United States Power Squadron-certified instructors. Students who successfully complete this course are not required to take any additional training or testing from the department and are eligible to receive an education card issued by the department upon proof of successful completion of the course from the United States Coast Guard Auxiliary- or United States Power Squadron-certified instructor and the payment of the $5 certification fee.

12.33(3) The education course for the boating education program is taught by certified instructors in a classroom setting and shall be a minimum of eight hours in length.

12.33(4) The following criteria apply to the boating education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students will be given a written examination that they must pass with 80 percent accuracy in order to earn an education certificate.

c. A home study course may be offered at the discretion of the department. The home study packet will contain the same written material provided in the classroom-based setting. An attestation form must be signed by the parent or guardian stating that the student completed the work. A student must pass a written examination with 80 percent accuracy in order to earn an education certificate.

d. The cost of the education course, for both the instructor-led class and the home study option, is $5 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Home study students must mail in payment with their completed course paperwork. Payment shall be made by check or money order made payable to the DNR. Course fees are nonrefundable.

e. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact the program coordinator, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

12.33(5) The department will establish requirements and standards for curriculum, security protocol, and managed delivery. Only vendors that have the National Association of State Boating Law Administrators seal of approval and have entered into a memorandum of understanding with the department will be allowed to offer an online course which results in the issuance of a department education certificate. Vendors may charge for their courses as agreed to in the memorandum of understanding and must collect the department's education certificate fee on behalf of the department.
[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.34(483A) Hunter safety and ethics education program.

12.34(1) The education course for the hunter safety and ethics education program is designed to teach students basic survival and first-aid skills, water safety, wildlife identification, and the basics of wildlife management, hunting laws, and firearm/archery safety. The education course also stresses the importance of individual responsibility and outdoor ethics. Satisfactory completion of the education course is mandatory pursuant to Iowa Code section 483A.27 for anyone born after January 1, 1972, who wishes to purchase an Iowa hunting license.

12.34(2) The education course is taught by certified instructors and is a minimum of ten hours in length. The education course shall have both classroom and hands-on components. Where permitted, live fire exercises may be taught.

12.34(3) The hunter safety and ethics education program also offers an online course/field day. The online course is approximately six hours in length and covers the same subject taught in the lecture portion of the department's course. A field day voucher may be purchased from the online vendor for a fee determined in the memorandum of understanding between the vendor and the department upon the student's successful completion of the online course. The field day voucher is valid for one year from the date of issuance and authorizes entrance into a field day course. The field day portion is approximately four hours in length and is designed to meet the additional required elements of the hunter safety and ethics education program required in Iowa Code section 483A.27. Students must preregister for the field day course by using the DNR online training registration and tracking system unless Internet access is unavailable, in which case the student shall preregister by contacting the department.

a. The department recommends that the student be 16 years of age or older to take the online/field day course.

b. Only vendors that have been approved by the International Hunter Education Association and have entered into a memorandum of understanding with the department shall be allowed to offer an online course that results in the issuance of a field day voucher.

12.34(4) The following criteria apply to the hunter safety and ethics education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certificate shall not become valid until the student's twelfth birthday. If the certificate is lost, a replacement certificate may be obtained from any electronic license system for Iowa (ELSI) vendor during regular business hours for $3.50.

b. A student successfully completes the course by completing a minimum of ten hours of training, six of which may be completed online if a student chooses to attend an online/field day course. Upon completion of the ten-hour curriculum, each student must take an individual oral or written test provided by the department. The student must pass the test with a score of 75 percent or higher. Based on the results of the test and the student's demonstration of safe handling of a firearm, the instructor shall determine if the student shall be issued a certificate of completion.

c. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact a recreation safety officer, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

d. There is no fee for the education course.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.35(321G) Snow groomer operator education program.

12.35(1) The department has developed a program to educate snow groomer operators to meet the statutory requirement of Iowa Code section 321G.2.

12.35(2) The snow groomer operator education program includes review of the department's policies and procedures, course materials, operator certification requirements, paperwork requirements, and the department's equipment agreement and completion of an apprenticeship as detailed in subrule 12.23(2).

12.35(3) The following criteria apply to the snow groomer operator education program:

a. An operator must be at least 18 years of age and possess a valid Iowa driver's license in order to be certified to operate a piece of snow grooming equipment.

b. The cost of the course is $10 per student. Payment may be made when the student registers for the course or to the instructor at the time of class. Payment shall be made by check or money order made payable to the DNR. Course fees are nonrefundable.

c. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact the program coordinator, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918.

d. Operators shall agree to follow all policies and procedures as set forth by the department and sign an acknowledgment form for these policies and procedures and file it with the department. The operator is ineligible to begin operating equipment, including during the apprenticeship training, until the acknowledgment form is signed and on file with the department.

12.35(4) A student who wishes to become a certified operator must complete an apprenticeship to receive the student's certification card. A student must operate the equipment under the direct supervision of a certified operator until the certified operator is confident that the student can successfully operate the equipment independent of assistance. Upon successful completion of the apprenticeship, the certified instructor will notify the program coordinator that the certification card can be issued. Operation of snow grooming equipment is allowed only by someone with a department-issued certification card or by an apprentice under direct supervision of a certified snow groomer operator. The certification card must be in the certified snow groomer operator's possession when the equipment is being operated.

12.35(5) Certified operators must attend a recertification course once every three years to maintain their certification.

12.35(6) The department may revoke an operator's certification if it finds that equipment was used or maintained in violation of the equipment agreement in place for the equipment, that there are founded cases of misuse of the equipment, or that an operator does not possess a valid driver's license issued by the Iowa department of transportation.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.36(483A) Bow hunter education program.

12.36(1) The education course for the bow hunter education program is designed to teach bow hunters safe and ethical hunting techniques and to instill responsible attitudes toward people, wildlife, and the environment. The education course is based on the National Bowhunter Education Foundation's publications and is administered by the department. The education course covers topics such as responsibilities of a bow hunter, knowledge necessary before hunting, shot placement, tree stand safety, blood trailing, and game care.

12.36(2) The education course is offered in both a classroom and an online setting.

a. The classroom course is taught by department-certified instructors and is approximately six hours in length. The course consists of both a lecture and hands-on exercises. Students will be given a written examination which they must pass with 75 percent accuracy in order to earn an education certificate.

b. The online course is a combination of an online class and a field day and is recommended for students 16 years of age or older. A student must complete both the online class and field day to gain certification. Only vendors that have been approved by the International Hunter Education Association and have entered into a memorandum of understanding with the department will be allowed to offer an online course that results in the issuance of a field day voucher. The field day voucher is valid for one year and authorizes entrance into a field day course.

(1) The online class is completed by the student on the student's own time. This portion of the course is in conjunction with the National Bowhunter Education Foundation, which charges a fee to students for the foundation's service.

(2) The field day is offered free of charge by a certified bow hunter instructor. A student successfully completes the online course/field day by presenting to the field day instructor a copy of the Field Day Qualifier Certificate from the National Bowhunter Education Foundation online course to show that the student has successfully completed the online portion. Students then must successfully participate in practical testing at the field day and demonstrate bow and arrow safety and hunting skills under the supervision of a certified instructor. Students may be required to bring their own bow hunting

equipment to be used during the field day. Students must also preregister for the field day course by using the DNR online training registration and tracking system unless Internet access is unavailable, in which case the student shall preregister by contacting the department.

12.36(3) The following criteria apply to the bow hunter education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact a recreation safety officer, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

c. There is no charge for the department's course.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

571—12.37(483A) Fur harvester education program.

12.37(1) The fur harvester education program is designed to teach trappers safe and ethical trapping techniques and to instill responsible attitudes toward people, wildlife, and the environment.

12.37(2) The fur harvester education program is between six to eight hours in length, and students will receive instruction and hands-on training on the history and heritage of the fur trade, biology and management of Iowa furbearers, wildlife regulations and their purpose, ethics and responsibility, fur harvesting equipment, the basics of harvesting Iowa furbearers, marketing furbearers, public relations, and the basics of outdoor safety and survival. Students will receive a certificate of completion at the end of the education program.

12.37(3) The following criteria apply to the fur harvester education program:

a. Any student who is 11 years of age or older may enroll in a course and receive a certificate if the student successfully completes the course; however, if the student is 11 years old, the certification shall not become valid until the student's twelfth birthday.

b. Students must use the DNR online training registration and tracking system to register for classes unless Internet access is unavailable. Students who do not have access to the Internet, which includes access through a public option such as a school or library, may contact a recreation safety officer, a department district office, the system administrator, or an instructor to set up a student account and register for the class. Assistance may be found by calling (515)281-5918. Students under the age of 11 must have a parent or guardian establish a user account and register on their behalf.

c. There is no fee for the education program.

[**ARC 8816B**, IAB 6/2/10, effective 7/7/10]

The rules in this division are intended to implement Iowa Code sections 321G.2, 321G.23, 321I.25, 462A.1, and 483A.27.

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CHAPTER 44
SPECIAL EVENTS

[Prior to 12/31/86, Conservation Commission[290] Ch 35]

571—44.1(321G,321I,462A) Definitions. For the purposes of this chapter, the following definitions shall apply:

"Administrative processing fee" means the fee collected for the processing of each special event application that is submitted for specific vessel, snow, and all-terrain vehicle events.

"All-terrain vehicle" or *"ATV"* means a motorized flotation-tire vehicle with not less than three and not more than six low-pressure tires that is limited in engine displacement to less than 1,000 cubic centimeters and in total dry weight to less than 1,000 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

"Centralized special events application system" means the Web-based system used by applicants to submit applications for activities related to regulated vehicles and vessels which are permitted under this chapter. Approved applications shall be placed on a calendar of events Web page, accessible from the department's homepage, to inform the general public of scheduled events on public land, ice, and water.

"Commission" means the natural resource commission.

"Demonstration" means an outward display showing how equipment works or items are used, with or without the intent to sell; a meeting, gathering, or parade; or a competitive event, tournament, or race.

"Department" means the Iowa department of natural resources.

"Exhibition" means the act or fact of exhibiting items or equipment; or a public show or display of items or equipment.

"Off-road motorcycle" means a two-wheeled motor vehicle that has a seat or saddle designed to be straddled by the operator and handlebars for steering control and that is intended by the manufacturer for use on natural terrain. "Off-road motorcycle" includes a motorcycle that was originally issued a certificate of title and registered for highway use under Iowa Code chapter 321 but which contains design features that enable operation over natural terrain.

"Off-road utility vehicle" means a motorized flotation-tire vehicle with not less than four and not more than eight low-pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bucket or bench design, not intended to be straddled by the operator, and a steering wheel or control levers for control. A motorized vehicle that was previously titled or is currently titled under Iowa Code chapter 321 shall not be registered or operated as an off-road utility vehicle.

"Permit" means a document issued by the department that enumerates all stipulations, requirements, and contingencies that the applicant must accept and adhere to throughout the duration of the approved event.

"Program coordinator" means the person assigned from the snowmobile, all-terrain vehicle, and boating programs to coordinate the processing of special event applications and who serves as the primary contact for information about special events for the respective programs.

"Snowmobile" means a motorized vehicle weighing less than 1,000 pounds which uses sled-type runners or skis, endless belt-type tread with a width of 48 inches or less, or any combination of runners, skis, or tread and which is designed for travel on snow or ice. "Snowmobile" does not include an all-terrain vehicle, as defined in Iowa Code section 321I.1, which has been altered or equipped with runners, skis, belt-type tracks, or treads.

"Special event" means an organized race, tournament, exhibition, or demonstration of limited duration that is conducted on public land, ice, or waters of the state under the jurisdiction of the commission according to a prearranged schedule and in which general public interest is manifested.

"Vessel" means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are considered watercraft.

[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.2(321G,321I,462A) Applicability. These rules are applicable to all fee title and dedicated lands and all waters under the jurisdiction of the commission or those lands and waters managed by the commission for public access.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.3(321G,321I,462A) Permit required. A permit issued by the department is required in order to conduct a special event as defined in this chapter on public land, ice, or waters under the jurisdiction of the natural resource commission, including dealer demonstrations. Any one of the following criteria may determine the need for a special event permit:

1. The event is open to the public.
2. The event charges an admission fee.
3. The event awards prizes.
4. The event promotes competitive events.
5. Attendance is solicited through advertising, invitation, or other solicitation.
6. The event may adversely impact the use of the area by others.

[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.4(321G,321I,462A) Permit conditions. The department may impose conditions not specifically covered herein for any special event as deemed necessary to protect the resource or to ensure public safety. Such conditions shall be included in the permit issued by the department.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.5(321G,321I,462A) Application procedures. The following procedures shall be used when applying for a special event permit:

44.5(1) Application shall be made on an electronic form accessed through the department's centralized special events application system.

44.5(2) The application shall be received electronically by the department via the centralized special events application system.

44.5(3) Applications shall be accepted beginning January 1 of a given year for requested tournament dates extending to March 1 of the following year and shall not be accepted later than 30 days prior to the requested date for tournaments.

44.5(4) The number of events to be held at any area on the same day may be restricted if deemed necessary to avoid congestion within the area so as to protect the resource. The commission shall consider the capacity of facilities such as boat ramps, docks, parking lots, and other area facilities and features when processing applications.

44.5(5) Permits are nontransferable.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.6(321G,321I,462A) Alternate dates. Alternate dates for the event may be submitted by the applicant. The department may approve a submitted alternate date for the event. If an alternate date is approved, the primary date shall still be used unless unforeseen circumstances prevent its use. If an alternate date must be used for the event, the applicant shall contact the program coordinator at least one week in advance of the date on which the event shall take place to obtain final approval to use the alternate date. The program coordinator shall document this approval in writing. Upon approval of an alternate date, the applicant shall notify the local conservation officer, and the program coordinator shall update the calendar of events.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.7(321G,321I,462A) Insurance coverage. The applicant shall secure event liability insurance and shall name the department as an additional insured. Insurance information shall be available at the time the application is submitted. The applicant shall have a copy of the insurance policy available at the event location to present to department personnel if requested.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.8(321G,321I,462A) Fees. The administrative fee for processing each special event application is $25. The fee is nonrefundable.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.9(321G,321I,462A) Buildings or structures placed on ice during a special event. The following criteria apply to the placement, construction, or erection of structures placed on ice during a special event.

44.9(1) *Vendor information provided on application.* The applicant shall identify the names and addresses of any vendors who will be on site during the special event.

44.9(2) *Owner information.* The full name, street address, and city of the building or structure owner shall be displayed legibly in a color contrasting to the background on all sides of the building or structure in block letters at least four inches in height.

44.9(3) *Accessibility.* Buildings or structures shall not be locked when in use.

44.9(4) *Reflectors.* Buildings or structures shall have reflectors attached to all sides of the building or structure in such a manner to enable them to reflect light at all times from sunrise to sunset.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.10(462A) Boating special events—registration exemptions. Vessels entered in special events shall not be required to be registered as stated in Iowa Code sections 462A.4 and 462A.5, subject to the following regulations.

44.10(1) *Vessel and participant list.* Sponsors of the special event shall maintain a list of the names and addresses of all persons participating in the event and a description of each vessel in the event.

44.10(2) *Vessels identified.* Each vessel in the special event shall be labeled with an identifying number or letter, which shall be clearly visible and which shall be recorded with the names and addresses of vessel passengers on the list as provided for in subrule 44.10(1).

44.10(3) *Exemption period.* Any vessel entered into a special event may be exempted from state registration requirements for the full 24-hour period of each day covered by the permit to conduct such event and as issued under Iowa Code section 462A.16.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.11(462A) Mississippi River or Missouri River. A department special event application is not needed for fireworks or boating events on the Mississippi River or Missouri River upon notification and proof that a United States Coast Guard (U.S.C.G.) permit has been secured. The regional U.S.C.G. office issuing permits for Mississippi and Missouri River events is located in St. Louis, Missouri.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.12(321G,321I,462A) Other Iowa Code provisions and permits. The applicant for a special event permit is responsible for ensuring full compliance with regulations of Iowa Code chapters 321G, 321I, and 462A and any other Iowa Code chapters and rules promulgated under those chapters that may be applicable for an event. Likewise, an applicant is required to acquire and comply with all applicable state and local permits issued by other state and local agencies necessary to hold the special event.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.13(321G,321I,462A) Authority to cancel or stop an event. At any time that a conservation officer, park manager, or park ranger determines that a special event is not in compliance with the permit issued or that safety concerns warrant canceling or stopping the event, the conservation officer, park manager, or park ranger has the authority to do so.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.14(321G,321I,462A) Future special event permits. The issuance of future permits to an applicant is contingent upon the applicant's compliance with past permits.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.15(321G,321I,462A) Nonexclusive use of area. Issuance of a special event permit does not grant the applicant exclusive use of the land, water, or ice that is the subject of the permit unless the permit explicitly authorizes exclusive use.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

571—44.16(321G,321I,462A) Other special events. These rules do not apply to special events that are governed exclusively by the department's parks bureau, fisheries bureau, or wildlife bureau, except to the extent that the authorization given under this chapter to use a concession in a state park fulfills the parks bureau's special event concession requirements in 571—Chapter 61.
[**ARC 8815B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code sections 321G.2, 321I.2, and 462A.16.

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TITLE VI
PARKS AND RECREATION AREAS

CHAPTER 61
STATE PARKS AND RECREATION AREAS

[Prior to 12/31/86, Conservation Commission[290] Ch 45]

571—61.1(461A) Applicability. This chapter is applicable to all state-owned parks and recreation areas managed by the department of natural resources and by political subdivisions unless otherwise noted.

571—61.2(461A) Definitions.

"Bank" or *"shoreline"* means the zone of contact of a body of water with the land and an area within 25 feet of the water's edge.

"Basic unit" or *"basic camping unit"* means the portable shelter used by one to six persons.

"Beach" is as defined in rule 571—64.1(461A).

"Beach house open shelter" means a building located on the beach which is open on two or more sides and which may or may not have a fireplace.

"Cabin" means a small, one-story dwelling of simple construction which is available for rental on a daily or weekly basis.

"Call center" means a phone center where operators process all telephone reservations, reservation changes and reservation cancellations for camping and rental facilities.

"Camping" means the erecting of a tent or shelter of natural or synthetic material or placing a sleeping bag or other bedding material on the ground or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

"Centralized reservation system" means a system that processes reservations using more than one method to accept reservations. Each method simultaneously communicates to a centralized database at a reservation contractor location to ensure that no campsite or rental facility is booked more than once.

"Chaperoned, organized youth group" means a group of persons 17 years of age and under, which is sponsored by and accompanied by adult representatives of a formal organization including, but not limited to, the Boy Scouts of America or Girl Scouts of America, a church, or Young Men's or Young Women's Christian Association. "Chaperoned, organized youth group" does not include families of members of a formal organization.

"Fishing" means taking or attempting to take fish by utilizing hook, line and bait as defined in Iowa Code section 481A.72, or use of permitted devices for taking rough fish as determined by Iowa Code sections 461A.42 and 481A.76.

"Free climbing" means climbing with the use of hands and feet only and without the use of ropes, pins and other devices normally associated with rappelling and rock climbing.

"Group camp" means those camping areas at Dolliver Memorial State Park, Springbrook State Park and Lake Keomah State Park where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available.

"Immediate family" means spouses, parents or legal guardians, domestic partners, dependent children and grandparents.

"Lodge" means a day-use building which is enclosed on all four sides and may have kitchen facilities such as a stove or refrigerator and which is available for rent on a daily basis. "Lodge" does not include buildings that are open on two or more sides and that contain fireplaces only.

"Modern area" means a camping area which has showers and flush toilets.

"Nonmodern area" means a camping area in which no showers are provided and which contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

"Open shelter" means a building which is open on two or more sides and which may or may not include a fireplace.

"Open shelter with kitchenette" means a building which is open on two or more sides and contains a lockable, enclosed kitchen area.

"Organized youth group campsite" means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

"Persons with disabilities parking permit" means an identification device bearing the international symbol of accessibility that is issued by the Iowa department of transportation or similar devices that are issued by other states. The device can be a hanging device or on a motor vehicle as a plate or sticker as provided in Iowa Code section 321L.2 or 321L.9.

"Person with physical disability" means an individual, commonly termed a paraplegic or quadriplegic, with paralysis or a physical condition of the lower half of the body with the involvement of both legs, usually due to disease or injury to the spinal cord; a person who is a single or double amputee of the legs; or a person with any other physical affliction which makes it impossible to ambulate successfully in park or recreation area natural surroundings without the use of a wheeled conveyance.

"Possession" means exercising dominion or control with or without ownership over property.

"Prohibited activity" means any activity other than fishing as defined in this chapter including, but not limited to, picnicking and camping.

"Property" means personal property such as goods, money, or domestic animals.

"Recreation areas" means the following areas that have been designated by action of the natural resource commission:

Area	County
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Claire Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pioneer Recreation Area	Mitchell
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as in 571—Chapters 52 and 105.

"Refuse" means trash, garbage, rubbish, waste papers, bottles or cans, debris, litter, oil, solvents, liquid or solid waste or other discarded material.

"Rental facilities" means those facilities that may be rented on a daily or nightly basis and includes open shelters, open shelters with kitchenettes, beach house open shelters, lodges, cabins, yurts and group camps.

"Reservation transaction fees" means fees as given in this chapter to process a reservation, change a reservation or cancel a reservation.

"Reservation window" means a rolling period of time in which a person may reserve a campsite or rental facility.

"Scuba diving" means swimming with the aid of self-contained underwater breathing apparatus.

"Special event" means any planned event for which attendance is solicited through advertising, invitation, or other solicitation and that may interfere with the general public's normal use of a state park or recreation area and its facilities.

"State park" means the following areas managed by the state and designated by action of the natural resource commission:

Area	County
A. A. Call	Kossuth
Backbone	Delaware
Banner Lakes at Summerset	Warren
Beed's Lake	Franklin
Bellevue	Jackson
Big Creek	Polk
Black Hawk	Sac
Cedar Rock	Buchanan
Clear Lake	Cerro Gordo
Dolliver Memorial	Webster
Elinor Bedell	Dickinson
Elk Rock	Marion
Fort Atkinson	Winneshiek
Fort Defiance	Emmet
Geode	Henry and Des Moines
George Wyth	Black Hawk
Green Valley	Union
Gull Point	Dickinson
Honey Creek	Appanoose
Lacey-Keosauqua	Van Buren
Lake Ahquabi	Warren
Lake Anita	Cass
Lake Darling	Washington
Lake Keomah	Mahaska
Lake Macbride	Johnson
Lake Manawa	Pottawattamie
Lake of Three Fires	Taylor
Lake Wapello	Davis
Ledges	Boone
Lewis and Clark	Monona
Maquoketa Caves	Jackson
McIntosh Woods	Cerro Gordo
Mini-Wakan	Dickinson
Nine Eagles	Decatur
Okamanpedan	Emmet
Palisades-Kepler	Linn
Pikes Peak	Clayton
Pikes Point	Dickinson
Pilot Knob	Winnebago
Pine Lake	Hardin
Prairie Rose	Shelby
Preparation Canyon	Monona
Red Haw	Lucas
Rice Lake	Winnebago

Area	County
Rock Creek	Jasper
Shimek Forest Campground	Lee
Springbrook	Guthrie
Stephens Forest Campground	Lucas
Stone	Plymouth and Woodbury
Trapper's Bay	Dickinson
Twin Lakes	Calhoun
Union Grove	Tama
Viking Lake	Montgomery
Walnut Woods	Polk
Wanata	Clay
Wapsipinicon	Jones
Waubonsie	Fremont
Wildcat Den	Muscatine
Yellow River Forest Campground	Allamakee

Use and management of these areas are governed by Iowa Code chapter 461A and by other restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

"State park managed by a management company" means the following area established by Iowa Code chapter 463C:

Area	County
Honey Creek Resort State Park	Appanoose

Use and management of this area are governed by rules established in this chapter, as well as by the indenture of trust entered into by and among the department, the treasurer of state, the Honey Creek Premiere Destination Park bond authority as established by Iowa Code chapter 463C, and Banker's Trust Corporation, dated October 1, 2006.

"State park managed by another governmental entity" means the following areas designated by action of the natural resource commission:

Area	County
Bobwhite	Wayne
Browns Lake-Bigelow Park	Woodbury
Cold Springs	Cass
Crystal Lake	Hancock
Eagle Lake	Hancock
Echo Valley	Fayette
Frank A. Gotch	Humboldt
Galland School	Lee
Heery Woods	Butler
Kearny	Palo Alto
Lake Cornelia	Wright
Lake Odessa Campground	Louisa
Margo Frankel Woods	Polk
Mill Creek	O'Brien
Oak Grove	Sioux

Area	County
Oakland Mills	Henry
Pammel	Madison
Pioneer	Mitchell
Sharon Bluffs	Appanoose
Silver Lake	Delaware
Spring Lake	Greene
Swan Lake	Carroll

Use and management of these areas are governed by Iowa Code chapter 461A, by this chapter, and by rules adopted by the managing entity.

"State preserve" means the following areas or portion of the areas dedicated by actions pursuant to Iowa Code section 465C.10:

Area	County
A. F. Miller	Bremer
Ames High Prairie	Story
Anderson Prairie	Emmet
Behrens Ponds and Woodland	Linn
Berry Woods	Warren
Bird Hill	Cerro Gordo
Bixby	Clayton
Bluffton Fir Stand	Winneshiek
Brush Creek Canyon	Fayette
Brushy Creek	Webster
Cameron Woods	Scott
Casey's Paha	Tama
Catfish Creek	Dubuque
Cayler Prairie	Dickinson
Cedar Bluffs Natural Area	Mahaska
Cedar Hills Sand Prairie	Black Hawk
Cheever Lake	Emmet
Clay Prairie	Butler
Claybanks Forest	Cerro Gordo
Coldwater Cave	Winneshiek
Crossman Prairie	Howard
Decorah Ice Cave	Winneshiek
Derald Dinesen Prairie	Shelby
Doolittle Prairie	Story
Eureka Woods	Greene
Fallen Rock	Hardin
Fish Farm Mounds	Allamakee
Five Ridge Prairie	Plymouth
Fleming Woods	Poweshiek
Fort Atkinson	Winneshiek
Fossil and Prairie Park	Floyd
Freda Haffner Kettlehole	Dickinson

Area	County
Gitchie Manitou	Lyon
Hanging Bog	Linn
Hardin City Woodland	Hardin
Hartley Fort	Allamakee
Hartman Bluff	Black Hawk
Hayden Prairie	Howard
Hoffman Prairie	Cerro Gordo
Indian Bluffs Primitive Area	Jones
Indian Fish Trap	Iowa
Kalsow Prairie	Pocahontas
Kish-Ke-Kosh Prairie	Jasper
Lamson Woods	Jefferson
Liska-Stanek Prairie	Webster
Little Maquoketa River Mounds	Dubuque
Malanaphy Springs	Winneshiek
Malchow Mounds	Des Moines
Manikowski Prairie	Clinton
Mann Wilderness Area	Hardin
Marietta Sand Prairie	Marshall
Mericle Woods	Tama
Merrill A. Stainbrook	Johnson
Merritt Forest	Clayton
Montauk	Fayette
Mossy Glen	Clayton
Mount Pisgah Cemetery	Union
Mount Talbot	Woodbury and Plymouth
Nestor Stiles Prairie	Cherokee
Ocheyedan Mound	Osceola
Old State Quarry	Johnson
Palisades-Dows	Linn
Pecan Grove	Muscatine
Pellett Memorial Woods	Cass
Pilot Grove	Iowa
Pilot Knob	Hancock
Retz Memorial Woods	Clayton
Roberts Creek	Clayton
Rock Creek Island	Cedar
Rock Island Botanical	Linn
Roggman Boreal Slopes	Clayton
Rolling Thunder Prairie	Warren

Area	County
Savage Woods	Henry
Searryl's Cave	Jones
Sheeder Prairie	Guthrie
Silver Lake Fen	Dickinson
Silvers-Smith Woods	Dallas
Slinde Mounds	Allamakee
St. James Lutheran Church	Winneshiek
Starr's Cave	Des Moines
Steele Prairie	Cherokee
Stinson Prairie	Kossuth
Strasser Woods	Polk
Sylvan Runkel	Monona
Toolesboro Mounds	Louisa
Turin Loess Hills	Monona
Turkey River Mounds	Clayton
White Pine Hollow	Dubuque
Williams Prairie	Johnson
Wittrock Indian Village	O'Brien
Woodland Mounds	Warren
Woodman Hollow	Webster
Woodthrush Woods	Jefferson

Use and management of these areas are governed by rules established in this chapter as well as by management plans adopted by the preserves advisory board.

"Swim" or *"swimming"* means to propel oneself in water by natural means, such as movement of limbs, and includes but is not limited to wading and the use of inner tubes or beach toy-type swimming aids.

"Walk-in camper" means a person arriving at a campground without a reservation and wishing to occupy a first-come, first-served campsite or unrented, reservable campsite.

"Yurt" means a one-room circular fabric structure built on a platform which is available for rental on a daily or weekly basis.

[**ARC 8821B**, IAB 6/2/10, effective 7/7/10]

571—61.3(461A) Establishment of centralized reservation system operating procedures and policies. The department shall establish a centralized reservation system to accept and process reservations for camping and rental facilities in state parks, recreation areas and state forest campgrounds.

61.3(1) *Centralized reservation system business rules manual.* The department shall adopt by reference the manual titled "Centralized Reservation System Business Rules for Iowa State Parks, Recreation Areas and State Forests," dated January 1, 2006, which sets procedures and policies for the administration of reservations of campsites and rental facilities through the centralized reservation system.

61.3(2) *Recreation facilities available on centralized reservation system.*

a. *Rental facilities.* All rental facilities will be available on the centralized reservation system with the exception of the group camp at Springbrook State Park.

b. *Campgrounds.*

(1) All campgrounds will be available on the centralized reservation system except for the campgrounds at A. A. Call State Park, Fort Defiance State Park and Preparation Canyon State Park and the backpack campsites located in state forests.

(2) Fifty percent of the total number of campsites in each individual campground shall be designated as reservable sites on the reservation system. The determination of which campsites shall be included in the 50 percent reservable designation shall be the responsibility of the park staff in each park. Park staff shall include a combination of electric, nonelectric and sewer/water sites while taking into consideration campsite characteristics such as location, shade and size. The department shall review the percentage of reservable sites and usage on a biennial basis and determine whether the percentage of reservable campsites should be changed. A reservable campsite shall be identified with a reservable site marker on the campsite post.

(3) All designated organized youth group campsites and campsites marked with the international symbol of accessibility shall be included in the reservation system.

61.3(3) *Methods available to make reservations.* Persons may make reservations by telephone through the call center or through the Internet using the reservation system Web site.

61.3(4) *Reservation transaction fees.*

a. *Reservation fee.* A nonrefundable reservation fee shall be charged for each reservation made per campsite or rental facility regardless of the length of stay. The one-time fee is per reservation and is not charged per day or night. This fee is in addition to the camping fees or rental fees established in subrules 61.4(1) and 61.5(1). The reservation fee varies depending upon the method used when the reservation is made.

(1) Internet reservation — $4 + 3 percent credit card processing fee (if applicable).

(2) Telephone reservation — $6 + 3 percent credit card processing fee (if applicable).

b. *Change fee.* A fee of $5 + 3 percent credit card processing fee (if applicable) shall be charged to change an existing reservation.

c. *Cancellation fee.* A fee of $5 shall be charged to cancel a reservation.

61.3(5) *Reservation window.*

a. *Camping.* The reservation window for campsite reservations is 3 months to 2 days prior to the arrival date.

b. *Rental facilities.*

(1) Rentals for May 1 to September 30. The reservation window for rental facilities is 12 months to 4 days prior to the arrival date.

(2) Rentals for October 1 to April 30. The reservation window for rental facilities is 12 months to 14 days prior to the arrival date.

571—61.4(461A) Camping.

61.4(1) *Fees.* The following are maximum per-night fees for camping in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event. In areas subject to a local option sales tax, the camping fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

	Fee	Sales Tax	Total Per Night
a. The following fees shall be in effect from May 1 to September 30 each year.			
Nonmodern	$ 8.49	.51	$ 9.00
Modern	10.38	.62	11.00
b. The following fees shall be in effect from October 1 to April 30 each year.			
Nonmodern	5.66	.34	6.00
Modern	7.55	.45	8.00
c. Electricity	4.72	.28	5.00
This fee will be charged in addition to the camping fee on sites where electricity is available (whether it is used or not).			
d. Organized youth group campsite, per group	14.15	.85	15.00
e. Cable television hookup	1.89	.11	2.00
f. Sewer and water hookup	2.83	.17	3.00
g. Additional fee for campgrounds designated for equestrian use	2.83	.17	3.00
This fee is in addition to applicable fees listed above.			
h. Camping tickets (per book of seven)	85.85	5.15	91.00

Camping tickets shall be valid for one year from the month of purchase. Persons using valid camping tickets purchased prior to any fee increase will not be required to pay the difference due to that fee increase.

61.4(2) *Varying fees.* Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

61.4(3) *Procedures for camping registration.*

a. *Registration.*

(1) Registration of walk-in campers occupying nonreservable campsites or unrented, reservable campsites will be on a first-come, first-served basis and will be handled by a self-registration process. Registration forms will be provided by the department of natural resources. Campers shall, within one-half hour of arrival at the campground, complete the registration form, place the appropriate fee or number of camping tickets in the envelope and place the envelope in the depository provided by the department of natural resources. One copy must then be placed in the campsite holder provided at the campsite.

(2) Park staff shall complete the registration of campers with reservations and place the registration in the campsite holder no later than one hour prior to check-in time on the day of the camper's arrival.

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of 61.4(3)*"a"* have been met.

c. Campsite registration must be in the name of a person 18 years of age or older who will occupy the camping unit on that site for the full term of the registration.

d. Each camping ticket shall cover the cost of one night of camping in a modern area on a site where electricity is furnished. In addition to using the camping ticket, persons camping on equestrian sites or on sites which also have sewer and water hookups or cable television hookups available must pay the additional charges for these services. Use of a camping ticket in an area or on a site which would require a lesser fee than an electrical site in a modern area will not entitle the user to a refund or credit of any kind.

61.4(4) *Organized youth group campsite registration.*

a. Registration procedures for organized youth group campsites shall be governed by paragraphs *"a," "b"* and *"c"* of 61.4(3).

b. Chaperoned, organized youth groups may choose to occupy campsites not designated as organized youth group campsites. However, the group is subject to all fees and rules in 61.4(1), 61.4(3) and 61.4(5) pertaining to the campsite the group wishes to occupy.

61.4(5) *Restrictions on campsite/campground use.* This subrule sets forth conditions of public use which apply to all state parks and recreation areas. Specific areas as listed in 61.4(6), 571—61.7(461A) and 571—61.10(461A) are subject to additional restrictions or exceptions. The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

a. Camping is restricted to designated camping areas within state parks and recreation areas and state forest campgrounds.

b. No more than six persons shall occupy a campsite except for the following:

(1) Families that exceed six persons may be allowed on one campsite if all members are immediate family and cannot logically be split to occupy two campsites.

(2) Campsites which are designated as chaperoned, organized youth group campsites.

c. Camping is restricted to one basic unit per site except that a small tent may be placed on a site with the basic unit. The area occupied by the small tent shall be no more than 8 feet by 10 feet and the tent shall hold no more than four people.

d. Each camping group shall utilize only the electrical outlet fixture designated for its particular campsite. No extension cords or other means of hookup shall be used to furnish electricity from one designated campsite to another.

e. Each camping group will be permitted to park one motor vehicle not being used for camping purposes at the campsite. Unless otherwise posted, one additional vehicle may be parked at the campsite.

f. All motor vehicles, excluding motorcycles, not covered by the provision in 61.4(5)*"e"* shall be parked in designated extra-vehicle parking areas.

g. Walk-in campers occupying nonreservable campsites or unrented, reservable campsites shall register as provided in subrule 61.4(3) within one-half hour of entering the campground.

h. Campers occupying nonreservable campsites shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights for nonreservable campsites. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources program.

i. Walk-in campers shall not occupy unrented, reservable campsites until 10 a.m. on the first camping day of their stay. Campers shall vacate the campground by 3 p.m. of the last day of their stay. Initial registration shall not exceed 2 nights. Campers may continue to register after the first 2 nights on a night-to-night basis up to a maximum of 14 consecutive nights, subject to campsite availability. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources program.

j. Campers with reservations shall not occupy a campsite before 4 p.m. of the first day of their stay. Campers shall vacate the site by 3 p.m. of the last day of their stay. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park or recreation area campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources program.

k. Campsites marked with the international symbol of accessibility shall be used only by vehicles displaying a persons with disabilities parking permit. The vehicle must be in use by a person with a disability, either as an operator or a passenger.

l. In designated campgrounds, equine animals and llamas must be stabled at a hitching rail, individual stall or corral if provided. Equine animals and llamas may be hitched to trailers for short

periods of time to allow for grooming and saddling. These animals may be stabled inside trailers if no hitching facilities are provided. Portable stalls/pens and electric fences are not permitted.

61.4(6) *Area-specific restrictions on campground use.* In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to specific areas listed as follows:

a. *Brushy Creek Recreation Area, Webster County.*

(1) In the designated equestrian campgrounds, the maximum number of equine animals to be tied to the hitching rails is six. Persons with a number of equine animals in excess of the number permitted on the hitching rail at their campsite shall be allowed to stable their additional animals in a trailer or register and pay for an additional campsite if available.

(2) In the designated equestrian campgrounds, equine animals may be tied to trailers for short periods of time to allow grooming or saddling; however, the tying of equine animals to the exterior of trailers for extended periods of time or for stabling is not permitted.

b. *Recreation area campgrounds.* Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:30 p.m. to 4 a.m., only registered campers are permitted in and out of the campgrounds.

c. *Lake Manawa State Park, Pottawattamie County.* Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.4(5) shall apply to Lake Manawa. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Lake Manawa campground for more than 14 nights in any 30-day period.

d. *Walnut Woods State Park, Polk County.* Except for the following limitations on campground length of stay, campsite use restrictions as stated in 61.4(5) shall apply to Walnut Woods. Campers may register for more than 1 night at a time but not for more than 14 consecutive nights. No person may camp at the Walnut Woods campground for more than 14 nights in any 30-day period.

61.4(7) *Campground fishing.* Rule 61.11(461A) is not intended to prohibit fishing by registered campers who fish from the shoreline within the camping area.

[**ARC 7684B**, IAB 4/8/09, effective 5/13/09; **ARC 8821B**, IAB 6/2/10, effective 7/7/10]

571—61.5(461A) Rental facilities. The following are maximum fees for facility use in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event.

61.5(1) *Fees.*

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	Per Night*	Per Week
Backbone State Park, Delaware County		
Renovated modern cabins	$ 50	$300
Two-bedroom modern cabins	85	510
Deluxe cabins	100	600
Black Hawk State Park, Sac County	100	600
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Honey Creek State Park, Appanoose County	35	210
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County	35	210
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510

	Per Night*	Per Week
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
Nine Eagles State Park, Decatur County	75	450
Palisades-Kepler State Park, Linn County	50	300
Pine Lake State Park, Hardin County		
Multifamily cabin	200	1200
Studio cabins (four-person occupancy limit)	65	390
One-bedroom cabins	75	450
Pleasant Creek State Recreation Area, Linn County	35	210
Prairie Rose State Park, Shelby County	35	210
Springbrook State Park, Guthrie County	200	1200
Stone State Park, Woodbury County	35	210
Waubonsie State Park, Fremont County		
Two-bedroom modern cabins	85	510
One-bedroom modern cabins	60	360
Two-bedroom camping cabins	50	300
One-bedroom camping cabins	35	210
Camping cabin	25	150
Wilson Island State Recreation Area, Pottawattamie County	25	150
Extra cots, where available	1	
*Minimum two nights		

b. Yurt rental. This fee does not include tax. Tax will be calculated at time of payment.

	Per Night*	Per Week
McIntosh Woods State Park, Cerro Gordo County	$ 35	$210
*Minimum two nights		

c. Lodge rental per reservation. This fee does not include tax. Tax will be calculated at time of payment.

	Per Weekday M-Th***	Per Weekend Day Fr-Su
A. A. Call State Park, Kossuth County	$ 40	$ 80
Backbone State Park Auditorium, Delaware County**	25	50
Backbone State Park, Delaware County	62.50	125
Beed's Lake State Park, Franklin County	40	80
Bellevue State Park-Nelson Unit, Jackson County	50	100
Clear Lake State Park, Cerro Gordo County	50	100
Dolliver Memorial State Park-Central Lodge, Webster County**	30	60
Dolliver Memorial State Park-South Lodge, Webster County	37.50	75
Ft. Defiance State Park, Emmet County	35	70
George Wyth State Park, Black Hawk County**	35	70
Gull Point State Park, Dickinson County	100	200
Lacey-Keosauqua State Park, Van Buren County	35	70
Lake Ahquabi State Park, Warren County	45	90
Lake Darling State Park, Washington County	100	200
Lake Keomah State Park, Mahaska County	45	90

	Per Weekday M-Th***	Per Weekend Day Fr-Su
Lake Macbride State Park, Johnson County		
Beach Lodge	35	70
Lodge	35	70
Lake of Three Fires State Park, Taylor County	35	70
Lake Wapello State Park, Davis County	30	60
Lewis and Clark State Park, Monona County	35	70
Palisades-Kepler State Park, Linn County	87.50	175
Pine Lake State Park, Hardin County	40	80
Pleasant Creek Recreation Area, Linn County**	37.50	75
Stone State Park, Woodbury/Plymouth Counties	62.50	125
Viking Lake State Park, Montgomery County	30	60
Walnut Woods State Park, Polk County	100	200
Wapsipinicon State Park, Jones County		
Heated year-round lodge	35	70
Unheated seasonal lodge	20	40

**Does not contain kitchen facilities

***The weekend day fee applies to New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, even though the holiday may fall on a weekday.

d. Open shelter reservation, $25 plus applicable tax.

e. Reservation for open shelter with kitchen, $75 plus applicable tax.

f. Beach house open shelter reservation, $40 plus applicable tax:

Lake Ahquabi State Park, Warren County

Lake Wapello State Park, Davis County

Pine Lake State Park, Hardin County

Springbrook State Park, Guthrie County

g. Group camp rental. This fee does not include tax. Tax will be calculated at time of payment.

(1) Dolliver Memorial State Park, Webster County. Rental includes use of restroom/shower facility at Dolliver Memorial State Park.

1. Chaperoned, organized youth groups—$2 per day per person with a minimum charge per day of $60.

2. Other groups—$15 per day per cabin plus $30 per day for the kitchen and dining facility.

(2) Lake Keomah State Park, Mahaska County. All groups—$40 per day for the dining/restroom facility plus the applicable camping fee. Lake Keomah dining/restroom facility day use only rental $90.

h. Springbrook State Park conservation education center rental. The conservation education center may be rented as a group camp facility or as an educational group facility. All rentals shall be handled through staff at the education center.

(1) Linen service. Linen service includes bedding, pillows, towels and washcloths. The linen service fee stated below shall be charged. School groups are required to use the linen service. All other groups may elect to use the linen service.

(2) Concessionaire. All groups that utilize the classroom building and use education center staff for programs must use the concessionaire for all meals. All other groups may elect to use the kitchenette at the fee stated below or use the concessionaire or a combination of both.

(3) Classroom. All day use groups not utilizing the entire conservation education center facilities must pay the appropriate classroom or library fee. Overnight groups wishing to use the classroom facility for non-conservation education activities (such as quilters' meetings or family reunions) must pay the appropriate classroom fee.

(4) Reservations. School groups and DNR camps may reserve the center three years in advance. All other groups may reserve the center a year in advance on a first-come, first-served basis. There is no reservation fee. Fees shall be paid upon arrival at the center.

(5) Damage deposit. The damage deposit shall be paid on a separate instrument from the rental fee. School groups shall be exempt from this requirement.

(6) Day use attendance fee. A fee of $5 per person per day plus applicable tax shall be charged to all day use groups and all persons associated with overnight groups attending day functions only when they utilize the entire conservation education center facilities and staff services.

(7) Overnight rental fees. These fees do not include tax. Tax will be calculated at time of payment.

1. Kindergarten through grade 12—$5 per person per night.
2. Adults—$15 per person per night.
3. Families—$160 per dorm per night.

(8) Other services. These fees do not include tax. Tax will be calculated at time of payment.

1. Linen service—$5 per person per night.
2. Family linen service—$160 per dorm per night.
3. Kitchenette rental—$30 per day or night.
4. Classroom rental—$100 per day or night.
5. Library rental—$50 per day or night.
6. Dining hall rental, day use only—$100 per day.
7. Dining hall with kitchenette rental, day use only—$130 per day.

(9) Damage deposit—$50 per visit.

(10) Check-out times for dorms.

1. Monday-Saturday, 8 a.m.
2. Sunday, 9 a.m.

61.5(2) *Varying fees.* Fees charged for like services in state-owned areas under management by political subdivisions may vary from those established by this chapter.

61.5(3) *Procedures for rental facility registration and rentals.*

a. Registrations for all rental facilities must be in the name of a person 18 years of age or older who will be present at the facility for the full term of the reservation.

b. Rental stay requirements for cabins and yurts.

(1) Except as provided in subparagraphs 61.5(3)*"b"*(2) and 61.5(3)*"b"*(3), cabin reservations must be for a minimum of one week (Friday p.m. to Friday a.m.) beginning the Friday of the national Memorial Day holiday weekend through Thursday after the national Labor Day holiday. From the Friday after the national Labor Day holiday through the Thursday before the national Memorial Day holiday weekend, cabins may be reserved for a minimum of two nights.

(2) The cabins at Dolliver Memorial State Park; the camping cabins at Pleasant Creek and Wilson Island State Recreation Areas and Green Valley, Honey Creek, Lake Darling and Stone State Parks; the yurts at McIntosh Woods State Park; and the group camps at Dolliver Memorial and Lake Keomah State Parks may be reserved for a minimum of two nights throughout the entire rental season.

(3) The multifamily cabins at Pine Lake and Springbrook State Parks may be reserved for a minimum of two nights throughout the entire rental season with the following exceptions:

1. From the Friday of the national Memorial Day holiday weekend through the Thursday after the national Labor Day holiday, a Friday and Saturday night stay is required for weekends.
2. A Friday, Saturday, and Sunday night stay is required for the national Memorial Day holiday and national Labor Day holiday weekends.
3. A Thursday, Friday, and Saturday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Thursday, Friday or Saturday.
4. A Friday, Saturday, and Sunday night stay is required for the Fourth of July holiday if the Fourth of July occurs on a Monday.

(4) All unreserved cabins, yurts and group camps may be rented for a minimum of two nights on a walk-in, first-come, first-served basis. No walk-in rentals will be permitted after 6 p.m.

(5) Reservations or walk-in rentals for more than a two-week stay will not be accepted for any facility.

c. Persons renting cabins, yurts or group camp facilities must check in at or after 4 p.m. on Saturday. Check-out time is 11 a.m. or earlier on Saturday.

d. Persons renting facilities listed in subparagraph 61.5(3)*"b"*(2) must check in at or after 4 p.m. on the first day of the two-night rental period. Check-out time is 11 a.m. or earlier on the last day of the two-night rental period.

e. Except by arrangement for late arrival with the park staff, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park's closing time established by Iowa Code section 461A.46 or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park staff if next-day arrival is to be later than 9 a.m.

f. The number of persons occupying rental cabins is limited to six in cabins which contain one bedroom or less and eight in cabins with two bedrooms. Occupancy of the studio cabins at Pine Lake and all camping cabins is limited to four persons. Occupancy of the yurts is limited to four persons.

g. Except at parks or recreation areas with camping cabins or yurts, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. One small tent shall be allowed at each cabin or yurt in the designated areas and is subject to the occupancy requirements of 61.4(5)*"b."*

h. Open shelters and beach house open shelters which are not reserved are available on a first-come, first-served basis. If the open shelters with kitchenettes are not reserved, the open shelter portions of these facilities are available on a first-come, first-served basis.

i. Except by arrangement with the park staff in charge of the area, persons renting lodge, shelter, and beach house open shelter facilities and all guests shall vacate the facility by 10 p.m.

61.5(4) *Damage deposits for all rental facilities.*

a. Upon arrival for the rental facility period, renters shall pay in full a damage deposit in the amount of $50.

b. Damage deposits will be refunded only after authorized personnel inspect the rental facility to ensure that the facility and furnishings are in satisfactory condition.

c. If it is necessary for department personnel to clean up the facility or repair any damage beyond ordinary wear and tear, a log of the time spent in such cleanup or repair shall be kept. The damage deposit refund shall be reduced by an amount equivalent to the applicable hourly wage of the employees for the time necessary to clean the area or repair the damage and by the cost of any repairs of furnishings.

d. The deposit is not to be construed as a limit of liability for damage to state property. The department may take legal action necessary to recover additional damages.

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571—61.6(461A) Vessel storage fees. These fees do not include tax.

Vessel Storage Space (wet or dry)	Maximum Fee
Pontoon boats—eight months or less	$150
Eight months or less (new docks)	200
Year-round	200
Year-round (new docks)	250
Other boats—eight months or less	125
Eight months or less (new docks)	150
Year-round	150
Year-round (new docks)	200

571—61.7(461A) Restrictions—area and use. This rule sets forth conditions of public use which apply to all state parks and recreation areas. Specific areas as listed in 61.4(6), 61.8(461A) and 61.11(461A)

are subject to additional restrictions or exceptions. The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

61.7(1) *Animals.*

a. The use of equine animals and llamas is limited to roadways or to trails designated for such use.

b. Animals are prohibited within designated beach areas.

c. Livestock are not permitted to graze or roam within state parks and recreation areas. The owner of the livestock shall remove the livestock immediately upon notification by the department of natural resources personnel in charge of the area.

d. Except for dogs being used in designated hunting or in dog training areas, pets such as dogs or cats shall not be allowed to run at large within state parks, recreation areas, or preserves. Such animals shall be on a leash or chain not to exceed six feet in length and shall be either led by or carried by the owner, attached to an anchor/tie-out or vehicle, or confined in a vehicle.

61.7(2) *Beach use/swimming.*

a. Except as provided in paragraphs *"b"* and *"c"* of this subrule, all swimming and scuba diving shall take place in the beach area within the boundaries marked by ropes, buoys, or signs within state parks and recreation areas. Inner tubes, air mattresses and other beach-type items shall be used only in designated beach areas.

b. Persons may scuba dive in areas other than the designated beach area provided they display the diver's flag as specified in rule 571—41.10(462A).

c. Swimming outside beach area.

(1) Persons may swim outside the beach area under the following conditions:

1. Swimming must take place between sunrise and sunset;

2. The swimmer must be accompanied by a person operating a vessel and must stay within 20 feet of the vessel at all times during the swim;

3. The vessel accompanying the swimmer must display a flag, which is at least 12-inches square, is bright orange, and is visible all around the horizon; and

4. The person swimming pursuant to this subparagraph must register with the park staff in charge of the area and sign a registration immediately prior to the swim.

(2) Unless swimming is otherwise posted as prohibited or limited to the designated beach area, a person may also swim outside the beach area provided that the person swims within ten feet of a vessel which is anchored not less than 100 yards from the shoreline or the marked boundary of a designated beach. Any vessel, except one being uprighted, must be attended at all times by at least one person remaining on board.

(3) A passenger on a sailboat or other vessel may enter the water to upright or repair the vessel and must remain within ten feet of that vessel.

d. The provisions of paragraph *"a"* of this subrule shall not be construed as prohibiting wading in areas other than the beach by persons actively engaged in shoreline fishing.

61.7(3) *Bottles.* Possession or use of breakable containers, the fragmented parts of which can injure a person, is prohibited in beach areas of state parks and recreation areas.

61.7(4) *Chainsaws.* Except by written permission of the director of the department of natural resources, chainsaw use is prohibited in state parks and recreation areas. This provision is not applicable to employees of the department of natural resources in the performance of their official duties.

61.7(5) *Firearms.* The use of firearms in state parks and recreation areas, as defined in 61.2(461A), is limited to the following:

a. Lawful hunting as traditionally allowed at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, Mines of Spain Recreation Area (pursuant to 61.9(461A)), Volga River Recreation Area and Wilson Island Recreation Area.

b. Target and practice shooting in areas designated by DNR.

c. Special events, festivals, and education programs sponsored or permitted by DNR.

d. Special hunts authorized by the natural resource commission to control deer populations.

61.7(6) *Fishing off boat docks within state areas.* Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters.

61.7(7) *Garbage.* Using government refuse receptacles for dumping household, commercial, or industrial refuse brought as such from private property is prohibited.

61.7(8) *Motor vehicle restrictions.*

a. Except as provided in these rules, motor vehicles are prohibited on state parks, recreation areas and preserves except on constructed and designated roads, parking lots and campgrounds.

b. Use of motorized vehicles by persons with physical disabilities. Persons with physical disabilities may use certain motorized vehicles to access specific areas in state parks, recreation areas and preserves, according to restrictions set out in this paragraph, in order to enjoy the same recreational opportunities available to others. Allowable vehicles include any self-propelled electric or gas vehicle which has at least three wheels, but no more than six wheels, and is limited in engine displacement to less than 800 cubic centimeters and in total dry weight to less than 1,450 pounds.

(1) Permits.

1. Each person with a physical disability must have a permit issued by the director in order to use a motorized vehicle in specific areas within state parks, recreation areas, and preserves. Such permits will be issued without charge. An applicant must submit a certificate from a doctor stating that the applicant meets the criteria describing a person with a physical disability. One nonhandicapped companion may accompany the permit holder on the same vehicle if that vehicle is designed for more than one rider; otherwise the companion must walk.

2. Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a motorized vehicle to gain access to specific areas for recreational opportunities and facilities within state parks, recreation areas and preserves.

(2) Approved areas. On each visit, the permit holder must contact the park staff in charge of the specific area in which the permit holder wishes to use a motorized vehicle. The park staff must designate on a park map the area(s) where the permit holder will be allowed to use a motorized vehicle. This restriction is intended to protect the permit holder from hazards or to protect certain natural resources of the area. The map is to be signed and dated on each visit by the park staff in charge of the area. Approval for use of a motorized vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.

(3) Exclusive use. The issuance of a permit does not imply that the permittee has exclusive or indiscriminate use of an area. Permittees shall take reasonable care not to unduly interfere with the use of the area by others.

(4) Prohibited acts and restrictions.

1. Except as provided in 61.7(8)*"b,"* the use of a motorized vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps shall be carried by the permittee at any time the permittee is using a motorized vehicle in a park, recreation area or preserve and shall be exhibited to any department employee or law enforcement official upon request.

2. The speed limit for an approved motor vehicle off-road will be no more than 5 mph. The permit of a person who is found exceeding the speed limit will be revoked.

3. The permit of any person who is found causing damage to cultural and natural features or abusing the privilege of riding off-road within the park will be revoked.

(5) Employees exempt. Restrictions in subrule 61.7(8) shall not apply to department personnel, law enforcement officials, or other authorized persons engaged in research, management or enforcement when in performance of their duties.

61.7(9) *Noise.* Creating or sustaining any unreasonable noise in any portion of all state parks and recreation areas is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, the time of day, location, and other factors which would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is

unreasonable. Unreasonable noise shall include the operation or utilization of motorized equipment or machinery such as an electric generator, motor vehicle, or motorized toy; or audio device such as a radio, television set, tape deck, public address system, or musical instrument; or other device. Between the hours of 10:30 p.m. and 6 a.m., noise which can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

61.7(10) *Opening and closing times.* Except by arrangement or permission granted by the director or the director's authorized representative or as otherwise stated in this chapter, the following restrictions shall apply: All persons shall vacate all state parks and preserves before 10:30 p.m. each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person or persons shall enter into such parks and preserves until 4 a.m. the following day.

61.7(11) *Paintball guns.* The use of any item generally referred to as a paintball gun is prohibited in state parks, recreation areas and preserves.

61.7(12) *Restrictions on picnic site use.*

a. Open picnic sites marked with the international symbol of accessibility shall be used only by a person or group with a person qualifying for and displaying a persons with disabilities parking permit on the person's vehicle.

b. Paragraph 61.7(12)*"a"* does not apply to picnic shelters marked with the international accessibility symbol. The use of the symbol on shelters shall serve only as an indication that the shelter is wheelchair accessible.

61.7(13) *Rock climbing or rappelling.* The rock climbing practice known as free climbing and climbing or rappelling activities which utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings are prohibited in state parks and recreation areas, except by persons or groups registered with the park staff in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at Elk Rock State Park, Marion County; Ledges State Park, Boone County; Dolliver Memorial State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; Maquoketa Caves State Park, Jackson County; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

61.7(14) *Speech or conduct interfering with lawful use of an area by others.*

a. Speech commonly perceived as offensive or abusive is prohibited when such speech interferes with lawful use and enjoyment of the area by another member of the public.

b. Quarreling or fighting is prohibited when it interferes with the lawful use and enjoyment of the area by another member of the public.

61.7(15) *Deer population control hunts.* Deer hunting as allowed under Iowa Code section 461A.42*"c"* is permitted only during special hunts in the following state parks as provided under 571—Chapter 105 and as approved by the natural resource commission. During the dates of deer hunting, only persons engaged in deer hunting shall use the area or portions thereof as designated by DNR and signed as such.

Backbone State Park	Delaware County
Elk Rock State Park	Marion County
George Wyth State Park	Black Hawk County
Lake Darling State Park	Washington County
Lake Manawa State Park	Pottawattamie County
Lake of Three Fires State Park	Taylor County
Springbrook State Park	Guthrie County
Viking Lake State Park	Montgomery County

61.7(16) *Special event permits.* Any person or group wishing to conduct a special event in any state park or recreation area shall notify the department of natural resources manager in charge of the area in advance and comply with the following procedures.

a. At least 30 days prior to the scheduled event, the sponsor shall submit an application to the park staff of the area where the proposed event is to take place. Application forms shall be furnished by DNR. Submission of an application does not guarantee issuance of a permit by DNR.

b. Applicants for special events shall provide proof of liability insurance naming the applicant and DNR as additional insured.

c. If the area has a concessionaire on site, sales of food and other items shall be governed pursuant to 571—Chapter 14. If a concessionaire chooses not to provide these services during the event, the event sponsor may then bring in other concession operations as approved by DNR.

d. Exclusive use. Issuance of a special event permit does not imply that the permittee has exclusive use of an area unless a facility has been reserved pursuant to 61.3(461A) and 61.6(461A).

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571—61.8(461A) Certain conditions of public use applicable to specific parks and recreation areas. In addition to the general conditions of public use set forth in this chapter, special conditions shall apply to the specific areas listed as follows:

61.8(1) *Brushy Creek State Recreation Area, Webster County.* Swimming is limited by the provisions of 61.7(2); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily.

61.8(2) *Hattie Elston Access and Claire Wilson Park, Dickinson County.*

a. Parking of vehicles overnight on these areas is prohibited unless the vehicle operator and occupants are actively involved in boating or are fishing as allowed under 61.11(461A).

b. Overnight camping is prohibited.

61.8(3) *Mines of Spain Recreation Area, Dubuque County.* All persons shall vacate all portions of the Mines of Spain Recreation Area prior to 10:30 p.m. each day, and no person or persons shall enter into the area until 4 a.m. the following day.

61.8(4) *Pleasant Creek Recreation Area, Linn County.* Swimming is limited by the provisions of 61.7(2); also, swimming is prohibited at the beach from 10:30 p.m. to 6 a.m. daily. Access into and out of the north portion of the area between the east end of the dam to the campground shall be closed from 10:30 p.m. to 4 a.m., except that walk-in overnight fishing will be allowed along the dam. The areas known as the dog trial area and the equestrian area shall be closed from 10:30 p.m. to 4 a.m., except for equestrian camping and for those persons participating in a DNR-authorized field trial. From 10:30 p.m. to 4 a.m., only registered campers are permitted in the campground.

61.8(5) *Wapsipinicon State Park, Jones County.* The land adjacent to the park on the southeast corner and generally referred to as the "Ohler property" is closed to the public from 10:30 p.m. to 4 a.m.

571—61.9(461A) Mines of Spain hunting, trapping and firearms use.

61.9(1) The following described portions of the Mines of Spain Recreation Area are established and will be posted as wildlife refuges:

a. That portion within the city limits of the city of Dubuque located west of U.S. Highway 61 and north of Mar Jo Hills Road.

b. The tract leased by the department of natural resources from the city of Dubuque upon which the E. B. Lyons Interpretive Center is located.

c. That portion located south of the north line of Section 8, Township 88 North, Range 3 East of the 5th P.M. between the west property boundary and the east line of said Section 8.

d. That portion located north of Catfish Creek, east of the Mines of Spain Road and south of the railroad tracks. This portion contains the Julien Dubuque Monument.

61.9(2) Trapping and archery hunting for all legal species are permitted in compliance with all open-season, license and possession limits on the Mines of Spain Recreation Area except in those areas designated as refuges by 61.9(1).

61.9(3) Firearms use is prohibited in the following described areas:

a. The areas described in 61.9(1).

b. The area north and west of Catfish Creek and west of Granger Creek.

61.9(4) Deer hunting and hunting for all other species are permitted using shotguns only and are permitted only during the regular gun season as established by 571—Chapter 106. Areas not described in 61.9(3) are open for hunting. Hunting shall be in compliance with all other regulations.

61.9(5) Turkey hunting with shotguns is allowed only in compliance with the following regulations:

a. Only during the first shotgun hunting season established in 571—Chapter 98, which is typically four days in mid-April.

b. Only in that area of the Mines of Spain Recreation Area located east of the established roadway and south of the Horseshoe Bluff Quarry.

61.9(6) The use or possession of a handgun or any type of rifle is prohibited on the entire Mines of Spain Recreation Area except as provided in 61.9(4). Target and practice shooting with any type of firearm is prohibited.

61.9(7) All forms of hunting, trapping and firearms use not specifically permitted by 61.9(461A) are prohibited in the Mines of Spain Recreation Area.

571—61.10(461A) After-hours fishing—exception to closing time. Persons shall be allowed access to the areas designated in 61.11(461A) between the hours of 10:30 p.m. and 4 a.m. under the following conditions:

1. The person shall be actively engaged in fishing.
2. The person shall behave in a quiet, courteous manner so as not to disturb other users of the park such as campers.
3. Access to the fishing site from the parking area shall be by the shortest and most direct trail or access facility.
4. Vehicle parking shall be in the lots designated by signs posted in the area.
5. Activities other than fishing are allowed with permission of the director or an employee designated by the director.

571—61.11(461A) Designated areas for after-hours fishing. These areas are open from 10:30 p.m. to 4 a.m. for fishing only. The areas are described as follows:

61.11(1) *Black Hawk Lake, Sac County.* The area of the state park between the road and the lake running from the marina at Drillings Point on the northeast end of the lake approximately three-fourths of a mile in a southwesterly direction to a point where the park boundary decreases to include only the roadway.

61.11(2) *Claire Wilson Park, Dickinson County.* The entire area including the parking lot, shoreline and fishing trestle facility.

61.11(3) *Clear Lake State Park, Ritz Unit, Cerro Gordo County.* The boat ramp, courtesy dock, fishing dock and parking lots.

61.11(4) *Elinor Bedell State Park, Dickinson County.* The entire length of the shoreline within state park boundaries.

61.11(5) *Elk Rock State Park, Marion County.* The Teeter Creek boat ramp area just east of State Highway 14, access to which is the first road to the left after the entrance to the park.

61.11(6) *Green Valley Lake, Union County.*

a. The embankment of the road from the small parking lot east of the park ranger's residence, east to the "T" intersection and south to the westerly end of a point of land jutting into the lake directly south of the parking lot mentioned above.

b. From the east side of the spillway easterly across the dam to the west edge of the parking lot.

61.11(7) *Hattie Elston Access, Dickinson County.* The entire area including the parking lot shoreline and boat ramp facilities.

61.11(8) *Honey Creek State Park, Appanoose County.* The boat ramp area located north of the park office, access to which is the first road to the left after the entrance to the park.

61.11(9) *Geode State Park, Des Moines County portion.* The area of the dam embankment that is parallel to County Road J20 and lies between the two parking lots located on each end of the embankment.

61.11(10) *Lake Keomah State Park, Mahaska County.*

a. The embankment of the dam between the crest of the dam and the lake.

b. The shoreline between the road and the lake from the south boat launch area west and north to the junction with the road leading to the group camp shelter.

61.11(11) *Lake Macbride State Park, Johnson County.* The shoreline of the south arm of the lake adjacent to the county road commencing at the "T" intersection of the roads at the north end of the north-south causeway proceeding across the causeway thence southeasterly along a foot trail to the east-west causeway, across the causeway to the parking area on the east end of that causeway.

61.11(12) *Lake Manawa State Park, Pottawattamie County.* The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south 1.5 miles to the parking lot immediately north of the picnic area located on the west side of the southwest arm of the lake.

61.11(13) *Lower Pine Lake, Hardin County.* West shoreline along Hardin County Road S56 from the beach southerly to the boat ramp access.

61.11(14) *Mini-Wakan State Park, Dickinson County.* The entire area.

61.11(15) *North Twin Lake State Park, Calhoun County.* The shoreline of the large day-use area containing the swimming beach on the east shore of the lake.

61.11(16) *Pikes Point State Park, Dickinson County.* The shoreline areas of Pikes Point State Park on the east side of West Okoboji Lake.

61.11(17) *Prairie Rose State Park, Shelby County.* The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area located off County Road M47 and just north of the entrance leading to the park office.

61.11(18) *Rock Creek Lake, Jasper County.* Both sides of the County Road F27 causeway across the main north portion of the lake.

61.11(19) *Union Grove State Park, Tama County.*

a. The dam embankment from the spillway to the west end of the parking lot adjacent to the dam.

b. The area of state park that parallels BB Avenue, from the causeway on the north end of the lake southerly to a point approximately one-tenth of a mile southwest of the boat ramp.

61.11(20) *Upper Pine Lake, Hardin County.* Southwest shoreline extending from the boat launch ramp to the dam.

61.11(21) *Viking Lake State Park, Montgomery County.* The embankment of the dam from the parking area located southeast of the dam area northwesterly across the dam structure to its intersection with the natural shoreline of the lake.

571—61.12(461A) Vessels prohibited. Rule 61.11(461A) does not permit the use of vessels on the artificial lakes within state parks after the 10:30 p.m. park closing time. All fishing is to be done from the bank or shoreline of the permitted area.

571—61.13(461A) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

571—61.14(461A) Restore the outdoors program. Funding provided through the appropriation set forth in Iowa Code section 461A.3A, and subsequent Acts, shall be used to renovate, replace or construct new vertical infrastructure and associated appurtenances in state parks and other public facilities managed by the department of natural resources.

The intended projects will be included in the department's annual five-year capital plan in priority order by year and approved by the natural resource commission for inclusion in its capital budget request.

The funds appropriated by Iowa Code section 461A.3A, and subsequent Acts, will be used to renovate, replace or construct new vertical infrastructure through construction contracts, agreements

with local government entities responsible for managing state parks and other public facilities, and agreements with the department of corrections to use offender labor where possible. Funds shall also be used to support site survey, design and construction contract management through consulting engineering and architectural firms and for direct survey, design and construction management costs incurred by department engineering and architectural staff for restore the outdoors projects. Funds shall not be used to support general department oversight of the restore the outdoors program, such as accounting, general administration or long-range planning.

571—61.15(461A,463C) Honey Creek Resort State Park. This chapter shall not apply to Honey Creek Resort State Park, with the exception that subrules 61.7(1) through 61.7(9) and 61.7(11) through 61.7(16) and rule 61.12(461A) shall apply to the operation and management of Honey Creek Resort State Park. Where permission is required to be obtained from the department, an authorized representative of the department's management company may provide such permission in accordance with policies established by the department.

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code chapters 463C and 724.

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2 Amendments to 61.4(2)*"f"* and 61.3(5)*"a"* effective January 1, 1993.

3 Amendments to 61.4(2)*"a"* to *"d"* effective October 31, 1993.

CHAPTER 62
STATE FOREST CAMPING

[Prior to 12/31/86, Conservation Commission[290] Ch 41]

571—62.1(461A) Applicability. This chapter governs camping activity in the following areas:

1. Yellow River State Forest, Allamakee County.
2. Stephens State Forest, Clarke, Lucas, Appanoose, Davis and Monroe Counties.
3. Shimek State Forest, Van Buren and Lee Counties.

[**ARC 8820B**, IAB 6/2/10, effective 7/7/10]

571—62.2(461A) Definitions.

"Basic unit" or *"basic camping unit"* means the portable shelter used by one to six persons.

"Call center" means a phone center where operators process all telephone reservations, reservation changes and reservation cancellations for camping and rental facilities.

"Camping" means the erecting of a tent or shelter of natural or synthetic material, or placing a sleeping bag or other bedding material on the ground or parking a motor vehicle, motor home, or trailer for the apparent purpose of overnight occupancy.

"Centralized reservation system" means a system that processes reservations using more than one method to accept reservations. Each method simultaneously communicates to a centralized database at a reservation contractor location to ensure no campsite or rental facility is booked twice.

"Chaperoned, organized youth group" means a group of persons 17 years of age and under, which is sponsored by and accompanied by adult representatives of a formal organization including, but not limited to, the Boy Scouts of America or Girl Scouts of America, a church, or Young Men's or Young Women's Christian Association. "Chaperoned, organized youth group" does not include families of members of a formal organization.

"Immediate family" means spouses, parents or legal guardians, domestic partners, dependent children and grandparents.

"Nonmodern area" means a camping area in which no showers are provided and which contains only pit-type latrines or flush-type toilets. Potable water may or may not be available to campers.

"Organized youth group campsite" means a designated camping area within or next to the main campground where chaperoned, organized youth groups may camp.

"Reservation transaction fees" means fees as given in this chapter to process a reservation, change a reservation or cancel a reservation.

"Reservation window" means a rolling period of time in which a person may reserve a campsite or rental facility.

"Walk-in camper" means a person arriving at a campground without a reservation and wishing to occupy a first-come, first-served campsite or unrented, reservable campsite.

[**ARC 8820B**, IAB 6/2/10, effective 7/7/10]

571—62.3(461A) Camping areas established and marked.

62.3(1) Areas to be utilized for camping shall be established within each of the state forests listed in rule 62.1(461A).

62.3(2) Signs designating the established camping areas shall be posted along the access roads into these areas and around the perimeter of the area designated for camping use.

62.3(3) Areas approved for backpack camping (no vehicular access) shall be marked with appropriate signs and shall contain fire rings.

571—62.4(461A) Campground reservations. The department shall establish a centralized reservation system to accept and process reservations for camping and rental facilities in state parks, recreation areas and state forest campgrounds.

62.4(1) *Centralized reservation system business rules manual.* The department shall adopt by reference the manual titled "Centralized Reservation System Business Rules for Iowa State Parks, Recreation Areas and State Forests," dated January 1, 2006, which sets procedures and policies for

the administration of reservations of campsites and rental facilities through the centralized reservation system.

62.4(2) *Recreation facilities available on the centralized reservation system—campgrounds.*

a. Except for the backpack campsites, all state forest campgrounds shall be available on the centralized reservation system.

b. Fifty percent of the total number of campsites in each individual campground shall be designated as reservable sites on the reservation system. The determination of which campsites shall be included in the 50 percent reservable designation shall be the responsibility of the park staff in each park. Park staff shall include a combination of electric, nonelectric and sewer/water sites while taking into consideration campsite characteristics such as location, shade, and size. The department shall review the percentage of reservable sites and usage on a biennial basis and determine whether the percentage of reservable campsites should be changed. A reservable campsite shall be identified with a reservable site marker on the campsite post.

c. All designated organized youth group campsites and campsites marked with the international symbol of accessibility shall be included in the reservation system.

d. Reservations will not be taken for any backpack campsites in state forest campgrounds. Those sites shall be available on a first-come, first-served basis only.

62.4(3) *Methods available to make reservations.* Persons may make reservations by telephone through the call center or through the Internet using the reservation system Web site.

62.4(4) *Reservation transaction fees.*

a. *Reservation fee.* A nonrefundable reservation fee shall be charged for each reservation made per campsite regardless of the length of stay. The one-time fee is per reservation and is not charged per day or night. This fee is in addition to the camping fees established in 571—subrule 61.4(1). The reservation fee varies depending upon the method used when the reservation is made.

(1) Internet reservation — $4 + 3 percent credit card processing fee (if applicable).

(2) Telephone reservation — $6 + 3 percent credit card processing fee (if applicable).

b. *Change fee.* A fee of $5 + 3 percent credit card processing fee (if applicable) shall be charged to change an existing reservation.

c. *Cancellation fee.* A fee of $5 shall be charged to cancel a reservation.

62.4(5) *Reservation window—camping.* The reservation window for camping is three months to two days prior to the arrival date in which a person may make a reservation.

571—62.5(461A) Camping fees and registration.

62.5(1) Any person who camps in a state forest must register the person's name and address with the department of natural resources' representative in charge of the area.

a. Walk-in campers shall complete the registration form, place the appropriate fee in the envelope and place the envelope in the depository provided by the department of natural resources. One copy must then be placed in the campsite holder provided at the campsite.

b. Park staff shall complete the registration for the campers with reservations and place the registration in the campsite holder no later than one hour prior to the 4 p.m. check-in time on the day of the camper's arrival.

62.5(2) The fees for camping in established state forest campgrounds shall be the same as those cited in 571—paragraphs 61.4(1)*"a"* and *"b"* for all other nonmodern camping areas managed by the department of natural resources where fees are charged.

62.5(3) Campsites are considered occupied and campsite registration shall be considered complete when the requirements of 62.5(1) have been met.

62.5(4) The fees for an organized youth group campsite shall be the same as those cited in 571—paragraph 61.4(1)*"d"* for all other organized youth group campsites.

62.5(5) Backpack campsites. Persons using backpack campsites shall register at the forest area check station or other designated site. No fee will be charged for the use of the designated backpack campsites.

571—62.6(461A) Camping restrictions.

62.6(1) No person shall camp in the state forests listed in rule 62.1(461A) except within the designated camping areas or at established backpack campsite areas.

62.6(2) Camping within the designated camping area shall be on sites posted by numbered signs marking the location to be used by the camping unit or within the areas designated for backpack camping.

62.6(3) No more than six persons shall occupy a campsite except for the following:

a. Families that exceed six persons may be allowed on one campsite if all members are immediate family and cannot logically be split to occupy two campsites.

b. Campsites which are designated as chaperoned, organized youth group campsites.

62.6(4) Campers occupying reservable sites shall vacate the campground by 3 p.m. of the last day of their stay.

62.6(5) Camping is restricted to one basic unit per site except that a small tent may be placed on a site with the basic unit. The area occupied by the small tent shall be no more than 8 feet by 10 feet and the tent shall hold no more than four people.

[**ARC 8820B**, IAB 6/2/10, effective 7/7/10]

571—62.7(461A) Camping time limit. No basic camping unit shall be permitted to camp longer than two weeks at a time within a state forest, except for volunteers working under the department of natural resources' campground host program agreement.

571—62.8(461A) Camping refused. Department of natural resources officers are given authority to refuse camping privileges and to rescind any and all camping permits for cause.

571—62.9(461A) Firearms use prohibited. Except for peace officers acting in the scope of their employment, the use of firearms, fireworks, explosives, and weapons of all kinds by the public is prohibited within the established camping area as delineated by signs marking the area.

571—62.10(461A) Hours. Access into and out of the established camping areas shall be permitted from 4 a.m. to 10:30 p.m. During the hours of 10:31 p.m. to 3:59 a.m., only registered campers are permitted in the campgrounds.

571—62.11(461A) Horses and pets. No horse or other animal shall be hitched or tied to any tree or shrub in a manner to result in injury to state property. Pets such as dogs or cats shall not be allowed to run at large within the designated camping area. Such animals shall be deemed running at large unless the owner carries the animal or leads it by leash or chain not exceeding six feet in length or keeps it confined in or attached to a vehicle. Chains or other restraints used shall not be of sufficient length as to permit the animal to enter a designated campsite other than the one used by the animal's owner.

Stabling of equine animals and llamas shall be in accordance with 571—paragraph 61.4(5)*"k."*

571—62.12(461A) Noise. Creating or sustaining any unreasonable noise in any portion of all state forests is prohibited at all times. The nature and purpose of a person's conduct, the impact on other area users, the time of day, location, and other factors which would govern the conduct of a reasonable, prudent person under the circumstances shall be used to determine whether the noise is unreasonable. Unreasonable noise shall include the operation or utilization of motorized equipment or machinery such as an electric generator, motor vehicle, or motorized toy; or audio device such as a radio, television set, tape deck, public address system, or musical instrument; or other device. Between the hours of 10:30 p.m. and 6 a.m., noise which can be heard at a distance of 120 feet or three campsites shall be considered unreasonable.

These rules are intended to implement Iowa Code sections 461A.35, 461A.44, 461A.45, 461A.47 to 461A.51 and 461A.57.

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PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department "umbrella" include Substance Abuse[643], Professional Licensure[645], Dental Examiners[650], Medical Examiners[653], Nursing Board[655] and Pharmacy Examiners[657]

CHAPTER 1
REPORTABLE DISEASES, POISONINGS AND CONDITIONS, AND QUARANTINE AND ISOLATION

1.1(139A) Definitions
1.2(139A) Purpose and authority

REPORTABLE COMMUNICABLE AND INFECTIOUS DISEASES

1.3(139A,141A) Reportable communicable and infectious diseases
1.4(135,139A) Reporting of reportable communicable and infectious diseases

REPORTABLE POISONINGS AND CONDITIONS—NONCOMMUNICABLE

1.5(139A,135) Reportable poisonings and conditions
1.6(135,139A) Reporting poisonings and conditions

INVESTIGATION

1.7(135,139A) Investigation of reportable diseases

ISOLATION AND QUARANTINE

1.8(139A) Isolation and quarantine
1.9(135,139A) Quarantine and isolation
1.10 and 1.11 Reserved
1.12(135,137,139A) Quarantine and isolation—model rule for local boards
1.13(135,139A) Area quarantine

SPECIFIC NONCOMMUNICABLE CONDITIONS

1.14(139A) Cancer
1.15(144) Congenital and inherited disorders
1.16(139A) Agriculturally related injury

CONFIDENTIALITY

1.17(139A,22) Confidentiality

CHAPTER 2
HEPATITIS PROGRAMS

VIRAL HEPATITIS PROGRAM—VACCINATIONS AND TESTING

2.1(135) Definitions
2.2(135) Purpose
2.3(135) Exposure risks for hepatitis C virus
2.4(135) Information for public distribution
2.5(135) Hepatitis vaccination and testing program
2.6 to 2.8 Reserved

HEPATITIS C AWARENESS PROGRAM—VETERANS

2.9(135) Definitions
2.10(135) Purpose
2.11(135) Awareness materials
2.12(135) Awareness information
2.13(135) Resources for hepatitis follow-up and treatment

CHAPTER 3
EARLY HEARING DETECTION AND INTERVENTION

EARLY HEARING DETECTION AND INTERVENTION (EHDI) PROGRAM

3.1(135) Definitions
3.2(135) Purpose
3.3(135) Goal and outcomes
3.4(135) Program components
3.5(135) Screening the hearing of all newborns
3.6(135) Procedures required of birthing hospitals
3.7(135) Procedures required of birth centers
3.8(135) Procedures to ensure that children born in locations other than a birth center or birthing hospital receive a hearing screening
3.9(135) Reporting hearing screening results and information to the department
3.10(135) Conducting and reporting screening results and diagnostic audiologic assessments to the department
3.11(135) Sharing of information and confidentiality
3.12 Reserved
3.13(135) Procedure to accommodate parental objection
3.14(135) Civil/criminal liability
3.15 and 3.16 Reserved

HEARING AIDS AND AUDIOLOGIC SERVICES FUNDING PROGRAM

3.17(83GA,HF811) Eligibility criteria
3.18(83GA,HF811) Covered services
3.19(83GA,HF811) Application procedures
3.20(83GA,HF811) Hearing aids and audiologic services funding wait list
3.21(83GA,HF811) Reimbursement of providers
3.22(83GA,HF811) Appeals

CHAPTER 4
CENTER FOR CONGENITAL AND INHERITED DISORDERS

4.1(136A) Program explanation
4.2(136A) Definitions
4.3(136A) Iowa neonatal metabolic screening program (INMSP)
4.4(136A) Iowa maternal prenatal screening program (IMPSP)
4.5(136A) Regional genetic consultation service (RGCS)
4.6(136A) Neuromuscular and other related genetic disease program (NMP)
4.7(136A) Iowa registry for congenital and inherited disorders (IRCID)

CHAPTER 5
MATERNAL DEATHS

5.1(135) Reporting of maternal deaths
5.2(135) Ascertainment of maternal deaths
5.3(135) Reviewing of maternal deaths

CHAPTER 6
Reserved

CHAPTER 7
IMMUNIZATION AND IMMUNIZATION EDUCATION: PERSONS ATTENDING ELEMENTARY OR SECONDARY SCHOOLS, LICENSED CHILD CARE CENTERS OR INSTITUTIONS OF HIGHER EDUCATION

7.1(139A) Definitions
7.2(139A) Persons included
7.3(139A) Persons excluded
7.4(139A) Required immunizations
7.5(139A) Required education
7.6(139A) Proof of immunization
7.7(139A) Provisional enrollment
7.8(139A) Records and reporting
7.9(139A) Providing immunization services
7.10(139A) Compliance
7.11(22) Iowa's immunization registry
7.12(22) Release of immunization information

CHAPTER 8
Reserved

CHAPTER 9
OUTPATIENT DIABETES EDUCATION PROGRAMS

9.1(135) Scope
9.2(135) Definitions
9.3(135) Powers and duties
9.4(135) Application procedures for American Diabetes Association recognized programs
9.5(135) Renewal procedures for American Diabetes Association recognized programs
9.6(135) Application procedures for programs not recognized by the American Diabetes Association
9.7(135) Diabetes program management for programs not recognized by the American Diabetes Association
9.8(135) Program staff for programs not recognized by the American Diabetes Association
9.9(135) Renewal application procedures for programs not recognized by the American Diabetes Association
9.10(135) Annual report
9.11(135) Enforcement
9.12(135) Complaints
9.13(135) Appeal process
9.14(135) Formal contest

CHAPTER 10
Reserved

CHAPTER 11
ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

FINANCIAL ASSISTANCE TO ELIGIBLE HIV-INFECTED PATIENTS

11.1 to 11.15 Reserved

CERTIFICATION OF LABORATORIES FOR HIV TESTING

11.16(141) Purpose
11.17(141) Definitions
11.18(141) Responsibilities of the department

11.19(141)	Initial application and certification requirements
11.20	Reserved
11.21(141)	Renewal of laboratory certification
11.22(141)	Reinstatement of certification
11.23(141)	Application fees and inspection costs
11.24(141)	Requirements for laboratory personnel
11.25(141)	Laboratory procedures and procedure manual requirements
11.26(141)	Notification of certain changes during a certification period
11.27(141)	Testing methodologies and confirmation of positive test results
11.28(141)	Record maintenance and documentation of the testing process
11.29(141)	Reporting of test results to the department
11.30(141)	Complaints or noncompliance
11.31(141)	Adverse actions and the appeal process
11.32 to 11.34	Reserved

TRAINING PROGRAMS

11.35(141)	Purpose
11.36 to 11.39	Reserved

DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

11.40(141)	Purpose
11.41 to 11.44	Reserved

EMERGENCY CARE PROVIDERS EXPOSED TO CONTAGIOUS OR INFECTIOUS DISEASES

11.45(139B,141)	Purpose
11.46(139B,141)	Definitions
11.47(139B,141)	General provisions
11.48(139B,141)	Contagious or infectious diseases, not including HIV—hospitals
11.49(139B,141)	Contagious or infectious diseases, not including HIV—health care providers
11.50(139B,141)	HIV infection—hospitals
11.51(139B,141)	HIV infection—health care providers
11.52(139B,141)	Immunity
11.53(139B,141)	Confidentiality
11.54 to 11.69	Reserved

HIV-RELATED TEST FOR CONVICTED OR ALLEGED SEXUAL-ASSAULT OFFENDERS AND THE VICTIMS

11.70(709B)	Purpose
11.71(709B)	Definitions
11.72(709B)	HIV test—convicted or alleged sexual assault offender
11.73(709B)	Medical examination costs
11.74(709B)	Testing, reporting, and counseling—penalties
11.75 to 11.79	Reserved

HIV HOME COLLECTION

11.80(126)	Purpose
11.81(126)	Definitions
11.82(126)	HIV home testing kit
11.83(126)	HIV home collection kit

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

11.84(141A)	Definitions
11.85(141A)	Purpose
11.86(141A)	Eligibility requirements

11.87(141A) Enrollment process
11.88(141A) Distribution requirements
11.89(141A) ADAP waiting list
11.90(141A) Appeals
11.91(141A) Confidentiality

CHAPTER 12
APPROVAL OF CONFIRMATORY LABORATORIES FOR
PRIVATE SECTOR DRUG-FREE WORKPLACE TESTING

12.1(730) Purpose
12.2(730) Definitions
12.3(730) Powers and duties
12.4(730) Application procedures and requirements
12.5(730) Requirements of laboratory personnel involved in confirmatory testing for alcohol or other drugs, or their metabolites
12.6(730) Quality assurance program and procedure manual requirements
12.7(730) Analytical quality control
12.8(730) Sample security and confidentiality of test results
12.9(730) Confirmatory testing
12.10(730) Documentation of the confirmatory testing process
12.11(730) Reporting of confirmed positive test results to the medical review officer
12.12(730) Reporting requirements to department
12.13(730) Approval, renewal, and inspection fees
12.14(730) Renewal
12.15(730) Reciprocity
12.16(730) Changes during approval periods
12.17(730) Enforcement
12.18(730) Denial, suspension, modification or revocation of approval
12.19(730) Restoration of approval
12.20(730) Appeals process
12.21(730) Complaints

CHAPTER 13
Reserved

CHAPTER 14
WATER TREATMENT SYSTEMS

14.1(714) Purpose
14.2(714) Applicability
14.3(714) Definitions
14.4(714) Performance testing
14.5(714) Third-party testing agencies
14.6(714) Registration
14.7(714) Label and manufacturer's performance data sheet
14.8(714) Consumer information pamphlet
14.9(714) Sales of water treatment systems
14.10(714) Treatment of records
14.11(714) Penalties

CHAPTER 15
SWIMMING POOLS AND SPAS

15.1(135I) Applicability
15.2(135I) Scope

15.3(135I) Definitions and abbreviations

SWIMMING POOLS

15.4(135I) Swimming pool operations
15.5(135I) Construction and reconstruction

ADMINISTRATION

15.6(135I) Enforcement
15.7(135I) Variances
15.8(135I) Penalties
15.9(135I) Registration
15.10(135I) Training courses
15.11(135I) Swimming pool/spa operator qualifications
15.12(135I) Fees
15.13(135I) 28E agreements
15.14(135I) Application denial or partial denial—appeal
15.15 to 15.50 Reserved

SPAS

15.51(135I) Spa operations
15.52(135I) Construction and reconstruction

CHAPTERS 16 to 19
Reserved

CHAPTER 20
COMMUNITY WATER FLUORIDATION GRANT PROGRAM

20.1(135) Purpose
20.2(135) Definitions
20.3(135) Applications
20.4(135) Review and rating of applications
20.5(135) Project contracts
20.6(135) Implementation procedures
20.7(135) Reimbursement
20.8(135) Termination
20.9(135) Appeals

CHAPTER 21
CENTRAL REGISTRY FOR
BRAIN AND SPINAL CORD INJURIES

21.1(135) Purpose
21.2(135) Definitions
21.3(135) Reportable injuries
21.4(135) Who reports and under what circumstances
21.5(135) Method and frequency of reporting
21.6(135) Confidentiality
21.7(135) Quality assurance

CHAPTER 22
PRACTICE OF TATTOOING

22.1(135) Purpose
22.2(135) Definitions
22.3(135) General provisions
22.4(135) Sanitation and infection control
22.5(135) Equipment

22.6(135) Procedures
22.7(135) Permit issuance and renewal
22.8(135) Establishment permit requirements
22.9(135) Tattoo artist permit requirements
22.10(135) Temporary establishment permit requirements
22.11(135) Mobile unit permit requirements
22.12(135) Agreements
22.13(135) Inspection requirements
22.14(135) Tattoo inspector qualifications
22.15(135) Client records
22.16(135) Enforcement
22.17(135) Adverse actions and the appeal process

CHAPTER 23
Reserved

CHAPTER 24
PRIVATE WELL TESTING, RECONSTRUCTION, AND PLUGGING—GRANTS TO COUNTIES

24.1(135) Applicability
24.2(135) Definitions
24.3(135) Eligibility
24.4(135) Goal and objectives
24.5(135) Eligible grant costs
24.6(135) Ineligible grant costs
24.7(135) Performance requirements
24.8(135) Contents of grant application
24.9(135) Grant application submission
24.10(135) Multicounty grant applications
24.11(135) Grant period
24.12(135) Record keeping and retention
24.13(135) Grant amendments
24.14(135) Termination or forfeiture of grant funds

CHAPTER 25
STATE PLUMBING CODE

25.1(135) Adoption
25.2(135) Applicability
25.3(135) Fuel gas piping
25.4(135) Amendments to the Uniform Plumbing Code
25.5(135) Backflow prevention with containment

CHAPTER 26
BACKFLOW PREVENTION ASSEMBLY TESTER REGISTRATION

26.1(135K) Applicability
26.2(135K) Definitions
26.3(135K) Registration required
26.4(135K) Backflow prevention assembly tester training
26.5(135K) Registration
26.6(135K) Standards of conduct
26.7(135K) Penalty
26.8(135K) Denial, suspension or revocation

CHAPTER 27
PLUMBING AND MECHANICAL SYSTEMS BOARD—ADMINISTRATIVE AND REGULATORY AUTHORITY

27.1(17A,105) Definitions
27.2(17A,105,83GA,ch151) Purpose of board
27.3(17A,105) Organization of board and proceedings
27.4(17A,105) Official communications
27.5(17A,105) Office hours
27.6(21) Public meetings

CHAPTER 28
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE FEES

28.1(105) Fees
28.2(105) Biennial review of fee schedule

CHAPTER 29
PLUMBING AND MECHANICAL SYSTEMS BOARD—APPLICATION, LICENSURE, AND EXAMINATION

29.1(105) Definitions
29.2(105) Available licenses and general requirements
29.3(105) Medical gas piping certification
29.4(105) Minimum qualifications for licensure
29.5(105) General requirements for application for licensure
29.6(105) Examination
29.7(105) License renewal
29.8(83GA,HF2531) Master license—exception through September 30, 2010

CHAPTER 30
CONTINUING EDUCATION FOR PLUMBING AND MECHANICAL SYSTEMS PROFESSIONALS

30.1(105) Definitions
30.2(105) Continuing education requirements
30.3(105) Continuing education programs/activities
30.4(105) Course instructor(s)
30.5(105) Audit of continuing education requirements
30.6(105) Continuing education exemptions
30.7(105) Continuing education extensions
30.8(105) Continuing education reporting requirements

CHAPTER 31
PLUMBING AND MECHANICAL SYSTEMS BOARD—WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

31.1(17A,105,272C) Definitions
31.2(17A,105,272C) Scope of chapter
31.3(17A,105,272C) Applicability of chapter
31.4(17A,105,272C) Criteria for waiver or variance
31.5(17A,105,272C) Filing of petition
31.6(17A,105,272C) Content of petition
31.7(17A,105,272C) Additional information
31.8(17A,105,272C) Notice
31.9(17A,105,272C) Hearing procedures
31.10(17A,105,272C) Ruling
31.11(17A,105,272C) Public availability

31.12(17A,105,272C) Summary reports
31.13(17A,105,272C) Cancellation of a waiver
31.14(17A,105,272C) Violations
31.15(17A,105,272C) Defense
31.16(17A,105,272C) Judicial review

CHAPTER 32
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE
32.1(105,272C) Definitions
32.2(105,272C) Grounds for discipline
32.3(105,272C) Method of discipline
32.4(272C) Discretion of board
32.5(105) Civil penalties

CHAPTER 33
Reserved

CHAPTER 34
PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS
34.1(272C) Complaints
34.2(272C) Report of malpractice claims or actions or disciplinary actions
34.3(272C) Report of acts or omissions
34.4(272C) Investigation of complaints or reports
34.5(17A,272C) Issuance of investigatory subpoenas
34.6(272C) Peer review committees
34.7(17A) Appearance

CHAPTER 35
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE OF NONRESIDENT APPLICANT—RECIPROCITY
35.1(105) Definition
35.2(105) Reciprocity agreements
35.3(105) Application by reciprocity

CHAPTER 36
PLUMBING AND MECHANICAL SYSTEMS BOARD—PETITIONS FOR RULE MAKING
36.1(17A) Petition for rule making
36.3(17A) Inquiries

CHAPTER 37
BREAST AND CERVICAL CANCER
EARLY DETECTION PROGRAM
37.1(135) Definitions
37.2(135) Components of the IA BCCEDP
37.3(135) Client eligibility criteria
37.4(135) Client application procedures for IA BCCEDP services
37.5(135) Priority for program expenditures
37.6(135) Right to appeal
37.7(135) Verification for breast or cervical cancer treatment (BCCT) option of Medicaid

CHAPTER 38
GENERAL PROVISIONS FOR RADIATION MACHINES AND RADIOACTIVE MATERIALS

38.1(136C) Purpose and scope
38.2(136C) Definitions
38.3(136C) Exemptions from the regulatory requirements
38.4(136C) General regulatory requirements
38.5 Reserved
38.6(136C) Prohibited uses
38.7(136C) Communications
38.8(136C) Fees
38.9(136C) Administrative enforcement actions
38.10(136C) Deliberate misconduct

CHAPTER 39
REGISTRATION OF RADIATION MACHINE FACILITIES, LICENSURE OF RADIOACTIVE MATERIALS AND TRANSPORTATION OF RADIOACTIVE MATERIALS

39.1(136C) Purpose and scope
39.2(136C) Definitions
39.3(136C) Requirements for registration of X-ray and other electronic machines that produce radiation
39.4(136C) Requirements for licensing of radioactive materials
39.5(136C) Transportation of radioactive material

CHAPTER 40
STANDARDS FOR PROTECTION AGAINST RADIATION

GENERAL PROVISIONS

40.1(136C) Purpose and scope
40.2(136C) Definitions
40.3(136C) Implementation
40.4 to 40.9 Reserved

RADIATION PROTECTION PROGRAMS

40.10(136C) Radiation protection programs
40.11 to 40.14 Reserved

OCCUPATIONAL DOSE LIMITS

40.15(136C) Occupational dose limits for adults
40.16(136C) Compliance with requirements for summation of external and internal doses
40.17(136C) Determination of external dose from airborne radioactive material
40.18(136C) Determination of internal exposure
40.19(136C) Determination of prior occupational dose
40.20(136C) Planned special exposures
40.21(136C) Occupational dose limits for minors
40.22(136C) Dose equivalent to an embryo/fetus
40.23 to 40.25 Reserved

RADIATION DOSE LIMITS FOR INDIVIDUAL MEMBERS OF THE PUBLIC

40.26(136C) Dose limits for individual members of the public
40.27(136C) Compliance with dose limits for individual members of the public

RADIOLOGICAL CRITERIA FOR LICENSE TERMINATION

40.28(136C) Radiological criteria for license termination
40.29(136C) Radiological criteria for unrestricted use
40.30(136C) Criteria for license termination under restricted conditions

40.31(136C) Alternate criteria for license termination

TESTING FOR LEAKAGE OR CONTAMINATION OF SEALED SOURCES

40.32(136C) Testing for leakage or contamination of sealed sources
40.33 to 40.35 Reserved

SURVEYS AND MONITORING

40.36(136C) Surveys and monitoring—general
40.37(136C) Conditions requiring individual monitoring of external and internal occupational dose
40.38 to 40.41 Reserved

CONTROL OF EXPOSURE FROM EXTERNAL SOURCES IN RESTRICTED AREAS

40.42(136C) Control of access to high radiation areas
40.43(136C) Control of access to very high radiation areas
40.44(136C) Control of access to very high radiation areas—irradiators
40.45 to 40.47 Reserved

RESPIRATORY PROTECTION AND CONTROLS TO RESTRICT INTERNAL EXPOSURE IN RESTRICTED AREAS

40.48(136C) Use of process or other engineering controls
40.49(136C) Use of other controls
40.50(136C) Use of individual respiratory protection equipment
40.51 to 40.53 Reserved

STORAGE AND CONTROL OF LICENSED OR REGISTERED SOURCES OF RADIATION

40.54(136C) Security and control of licensed radioactive material in quantities of concern
40.55(136C) Security and control of licensed or registered sources of radiation
40.56(136C) Control of sources of radiation not in storage
40.57 to 40.59 Reserved

PRECAUTIONARY PROCEDURES

40.60(136C) Caution signs
40.61(136C) Posting requirements
40.62(136C) Exceptions to posting requirements
40.63(136C) Labeling containers and radiation machines
40.64(136C) Exemptions to labeling requirements
40.65(136C) Procedures for receiving and opening packages
40.66 to 40.69 Reserved

WASTE DISPOSAL

40.70(136C) General requirements
40.71(136C) Method for obtaining approval of proposed disposal procedures
40.72(136C) Disposal by release into sanitary sewerage
40.73(136C) Treatment or disposal by incineration
40.74(136C) Disposal of specific wastes
40.75(136C) Transfer for disposal and manifests
40.76(136C) Compliance with environmental and health protection regulations
40.77 to 40.79 Reserved

RECORDS

40.80(136C) General provisions
40.81(136C) Records of radiation protection programs
40.82(136C) Records of surveys
40.83(136C) Records of tests for leakage or contamination of sealed sources
40.84(136C) Records of prior occupational dose

40.85(136C) Records of planned special exposures
40.86(136C) Records of individual monitoring results
40.87(136C) Records of dose to individual members of the public
40.88(136C) Records of waste disposal
40.89(136C) Records of testing entry control devices for very high radiation areas
40.90(136C) Form of records
40.91 to 40.94 Reserved

REPORTS

40.95(136C) Reports of stolen, lost, or missing licensed or registered sources of radiation
40.96(136C) Notification of incidents
40.97(136C) Reports of exposures, radiation levels, and concentrations of radioactive material exceeding the constraints or limits
40.98(136C) Reports of planned special exposures
40.99(136C) Reports of transactions involving nationally tracked sources
40.100(136C) Reports of individual monitoring
40.101(136C) Notifications and reports to individuals
40.102(136C) Reports of leaking or contaminated sealed sources
40.103 and 40.104 Reserved

ADDITIONAL REQUIREMENTS

40.105(136C) Vacating premises
40.106 to 40.109 Reserved

NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS; INSPECTIONS

40.110(136C) Posting of notices to workers
40.111(136C) Instructions to workers
40.112(136C) Notifications and reports to individuals
40.113(136C) Presence of representatives of licensees or registrants and workers during inspection
40.114(136C) Consultation with workers during inspections
40.115(136C) Requests by workers for inspections
40.116(136C) Inspections not warranted—informal review
40.117(136C) Employee protection

CHAPTER 41
SAFETY REQUIREMENTS FOR THE USE OF
RADIATION MACHINES AND CERTAIN USES
OF RADIOACTIVE MATERIALS

41.1(136C) X-rays in the healing arts
41.2(136C) Use of radionuclides in the healing arts
41.3(136C) Therapeutic use of radiation machines
41.4 and 41.5 Reserved
41.6(136C) X-ray machines used for screening and diagnostic mammography
41.7(136C) X-ray machines used for stereotactically guided breast biopsy

CHAPTER 42
MINIMUM CERTIFICATION STANDARDS FOR DIAGNOSTIC RADIOGRAPHERS,
NUCLEAR MEDICINE TECHNOLOGISTS, AND RADIATION THERAPISTS

42.1(136C) Purpose and scope
42.2(136C) General requirements
42.3(136C) Specific requirements for diagnostic radiographers
42.4(136C) Specific requirements for nuclear medicine technologists
42.5(136C) Specific requirements for radiation therapists

42.6(136C) Specific eligibility requirements for radiologist assistant
42.7(136C) Specific requirements for podiatric radiographers

CHAPTER 43
MINIMUM REQUIREMENTS FOR RADON TESTING AND ANALYSIS
43.1(136B) Purpose and scope
43.2(136B) Definitions
43.3(136B) General provisions
43.4(136B) Application for certification
43.5(136B) Revocation of certification
43.6(136B) Reporting requirements
43.7(136B) Training and continuing education programs
43.8(136B) Exemptions
43.9(136B) Enforcement
43.10(136B) Penalties
43.11(136B) Persons exempted from certification

CHAPTER 44
MINIMUM REQUIREMENTS FOR RADON MITIGATION
44.1(136B) Purpose and scope
44.2(136B) Definitions
44.3(136B) General provisions
44.4(136B) Application for credentialing
44.5(136B) Revocation of credentialing
44.6(136B) Additional record-keeping requirements
44.7(136B) Continuing education
44.8(136B) Exemptions
44.9(136B) Enforcement
44.10(136B) Penalties

CHAPTER 45
RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL
RADIOGRAPHIC OPERATIONS
45.1(136C) General requirements for industrial radiography operations
45.2(136C) Radiation safety requirements for the use of radiation machines in industrial radiography
45.3(136C) Radiation safety requirements for use of sealed sources of radiation in industrial radiography
45.4(136C) Radiation safety requirements for the use of particle accelerators for nonhuman use
45.5(136C) Radiation safety requirements for analytical X-ray equipment
45.6(136C) Radiation safety requirements for well-logging, wireline service operations and subsurface tracer studies

CHAPTER 46
MINIMUM REQUIREMENTS FOR TANNING FACILITIES
46.1(136D) Purpose and scope
46.2(136D) Definitions
46.3(136D) Exemptions
46.4(136D) Permits and fees
46.5(136D) Construction and operation of tanning facilities
46.6(136D) Inspections, violations and injunctions

CHAPTERS 47 to 49
Reserved

CHAPTER 50
ORAL HEALTH

50.1(135) Purpose
50.2(135) Definitions
50.3(135) Dental director responsibilities
50.4(135) Oral health bureau functions
50.5(135) Funding

CHAPTER 51
DENTAL SCREENING

51.1(82GA,ch146,SF2111) Purpose
51.2(82GA,ch146,SF2111) Definitions
51.3(82GA,ch146,SF2111) Persons included
51.4(82GA,ch146,SF2111) Persons excluded
51.5(82GA,ch146,SF2111) Dental screening components
51.6(82GA,ch146,SF2111) Dental screening providers
51.7(82GA,ch146,SF2111) Time line for valid dental screening
51.8(82GA,ch146,SF2111) Proof of dental screening
51.9(82GA,ch146,SF2111) Dental screening documentation
51.10(82GA,ch146,SF2111) Assuring dental screening services
51.11(82GA,ch146,SF2111) Records
51.12(82GA,ch146,SF2111) Reporting
51.13(82GA,ch146,SF2111) Iowa's dental screening database
51.14(82GA,ch146,SF2111) Release of dental screening information
51.15(82GA,ch146,SF2111) Referral requirements
51.16(82GA,ch146,SF2111) Provider training

CHAPTERS 52 to 54
Reserved

CHAPTER 55
ADVISORY COUNCIL ON HEAD INJURIES

55.1(135) Council established
55.2(135) Meetings
55.3(135) Task forces
55.4(135) Minutes
55.5(135) Duties of the council
55.6(135) Conflict of interest

CHAPTER 56
BRAIN INJURY SERVICES PROGRAM

56.1(135) Definitions
56.2(135) Purpose
56.3(135) Waiver-eligible component
56.4(135) Cost-share component
56.5(135) Application process
56.6(135) Service providers and reimbursement
56.7(135) Available services/service plan
56.8(135) Redetermination
56.9(135) Appeal rights

CHAPTERS 57 to 66
Reserved

CHAPTER 67
BLOOD LEAD TESTING

67.1(135) Purpose
67.2(135) Definitions
67.3(135) Persons included
67.4(135) Persons excluded
67.5(135) Blood lead testing requirement
67.6(135) Time line for valid blood lead testing
67.7(135) Proof of blood lead testing
67.8(135) Referral requirements
67.9(135) Blood lead testing documentation
67.10(135) Records
67.11(135) Provider training

CHAPTER 68
CONTROL OF LEAD-BASED PAINT HAZARDS

68.1(135) Applicability
68.2(135) Definitions
68.3(135) Elevated blood lead (EBL) inspections required
68.4(135) Refusal of admittance
68.5(135) Lead hazard reduction required
68.6(135) Retaliation prohibited
68.7(135) Enforcement
68.8(135) Hearings
68.9(135) Variances
68.10(135) Injunction
68.11(135) Effective date

CHAPTER 69
RENOVATION, REMODELING, AND REPAINTING—
LEAD HAZARD NOTIFICATION PROCESS

69.1(135) Applicability
69.2(135) Definitions
69.3(135) Notification required in target housing
69.4(135) Notification required in multifamily housing
69.5(135) Emergency renovation, remodeling, or repainting in target housing
69.6(135) Certification of attempted delivery in target housing
69.7(135) Notification required in child-occupied facilities
69.8(135) Emergency renovation, remodeling, or repainting in child-occupied facilities
69.9(135) Certification of attempted delivery for child-occupied facilities
69.10(135) Subcontracts
69.11(135) Exemption
69.12(135) Record-keeping requirements
69.13(135) Compliance inspections
69.14(135) Enforcement
69.15(135) Waivers

CHAPTER 70
LEAD-BASED PAINT ACTIVITIES

70.1(135) Applicability
70.2(135) Definitions
70.3(135) Lead professional certification
70.4(135) Course approval and standards
70.5(135) Certification, interim certification, and recertification
70.6(135) Work practice standards for lead professionals conducting lead-based paint activities in target housing and child-occupied facilities
70.7(135) Firms
70.8 Reserved
70.9(135) Compliance inspections
70.10(135) Denial, suspension, or revocation of certification; denial, suspension, revocation, or modification of course approval; and imposition of penalties
70.11(135) Waivers

CHAPTER 71
EMERGENCY INFORMATION SYSTEM ON PESTICIDES FOR USE BY HEALTH CARE PROVIDERS DURING MEDICAL EMERGENCIES

71.1(139A) Scope
71.2(139A) Definitions
71.3(139A) Operation of EIS

CHAPTER 72
CHILDHOOD LEAD POISONING
PREVENTION PROGRAM

72.1(135) Definitions
72.2(135) Approved programs
72.3(135) Level of funding
72.4(135) Appeals

CHAPTER 73
SPECIAL SUPPLEMENTAL NUTRITION PROGRAM
FOR WOMEN, INFANTS, AND CHILDREN (WIC)

73.1(135) Program explanation
73.2(135) Adoption by reference
73.3(135) Availability of rules
73.4(135) Certain rules exempted from public participation
73.5(135) Definitions
73.6(135) Staffing of contract agencies
73.7(135) Certification of participants
73.8(135) Food delivery
73.9(135) Food package
73.10(135) Education
73.11(135) Health services
73.12(135) Appeals and fair hearings—local agencies and vendors
73.13(135) Right to appeal—participant
73.14(135) State monitoring of contract agencies
73.15(135) Migrant services
73.16(135) Civil rights
73.17(135) Audits
73.18(135) Reporting
73.19(135) Program violation

73.20(135) Data processing
73.21(135) Outreach
73.22(135) Caseload management
73.23(135) Grant application procedures for contract agencies
73.24(135) Participant rights

CHAPTER 74
FAMILY PLANNING SERVICES

74.1(135) Program explanation
74.2(135) Adoption by reference
74.3(135) Rule coverage
74.4(135) Definitions
74.5(135) Grant application procedures for contract agencies
74.6(135) Funding levels for contract agencies
74.7(135) Agency performance
74.8(135) Reporting
74.9(135) Fiscal management
74.10(135) Audits
74.11(135) Denial, suspension, revocation, or reduction of contracts with contract agencies
74.12(135) Right to appeal—contract agency

CHAPTER 75
STATEWIDE OBSTETRICAL AND
NEWBORN INDIGENT PATIENT CARE PROGRAM

75.1(255A) Definitions
75.2(255A) Covered services
75.3(255A) Quota assignment
75.4(255A) Eligibility criteria
75.5(255A) Application procedures
75.6(255A) Reimbursement of providers
75.7(255A) Reassignment of county quotas
75.8(255A) Appeals and fair hearings

CHAPTER 76
MATERNAL AND CHILD HEALTH PROGRAM

76.1(135) Program explanation
76.2(135) Adoption by reference
76.3(135) Rule coverage
76.4(135) Definitions
76.5(135) MCH services
76.6(135) Client eligibility criteria
76.7(135) Client application procedures for MCH services
76.8(135) Right to appeal—client
76.9(135) Grant application procedures for community-based contract agencies
76.10(135) Funding levels for community-based contract agencies
76.11(135) Contract agency performance
76.12(135) Reporting
76.13(135) Fiscal management
76.14(135) Audits
76.15 Reserved
76.16(135) Denial, suspension, revocation or reduction of contracts with contract agencies
76.17(135) Right to appeal—contract agency

CHAPTER 77
LOCAL BOARDS OF HEALTH

77.1(137) Purpose of local boards of health
77.2(137) Definitions
77.3(137) Roles and responsibilities of local boards of health
77.4(137) Organization of local boards of health
77.5(137) Operating procedures of local boards of health
77.6(137) Expenses of board of health members

CHAPTER 78
DISTRICT HEALTH DEPARTMENTS

78.1(137) Minimum standards for district health departments
78.2(137) Preparation of district health department plan
78.3(137) Approval of district health departments
78.4(137) Additions to district health departments
78.5(137) Withdrawal from district health departments

CHAPTER 79
Reserved

CHAPTER 80
LOCAL PUBLIC HEALTH SERVICES

80.1(135) Purpose
80.2(135) Definitions
80.3(135) Local public health services state grant
80.4(135) Billing services to the local public health services state grant
80.5(135) Right to appeal
80.6(135) Case management
80.7(135) Local board of health services
80.8(135) Local public health services
80.9(135) Public health nursing services
80.10(135) Home care aide services

CHAPTER 81
GENERAL RULES FOR MIGRATORY LABOR CAMPS

81.1(138) Shelters
81.2(138) Water supply
81.3(138) Waste disposal
81.4(138) Bathing facilities
81.5(138) Central dining facilities
81.6(138) Safety and fire

CHAPTER 82
OFFICE OF MULTICULTURAL HEALTH

82.1(135) Purpose
82.2(135) Definitions
82.3(135) Responsibilities of the office of multicultural health
82.4(135) Advisory council

CHAPTERS 83 and 84
Reserved

CHAPTER 85
LOCAL SUBSTITUTE MEDICAL DECISION-MAKING BOARDS

85.1(135) Purpose
85.2(135) Definitions
85.3(135) Appointment of local boards
85.4(135) Filing an application
85.5(135) Notification of patient and review of application
85.6(135) Panel appointment and procedures
85.7(135) Panel determination of need for surrogate decision making
85.8(135) Panel determination regarding proposed medical care decision
85.9(135) Right of appeal
85.10(135) Procedure when there is no local board
85.11(135) Records and reports
85.12(135) Liability

CHAPTER 86
PLACES WHERE DEAD HUMAN BODIES ARE PREPARED
FOR BURIAL OR ENTOMBMENT

86.1(156) Purpose
86.2(156) Definitions
86.3(156) Licensing
86.4(156) Public access areas
86.5(156) Preparation room
86.6(156) Crematorium chambers
86.7(156) Inspection fees

CHAPTER 87
HEALTHY FAMILIES IOWA (HFI)

87.1(135) Purpose
87.2(135) Definitions
87.3(135) Applicant eligibility
87.4(135) Participant eligibility
87.5(135) Program requirements
87.6(135) Contractor assurance
87.7(135) Applicant appeal process
87.8(135) Participant right to appeal

CHAPTER 88
VOLUNTEER HEALTH CARE PROVIDER PROGRAM

88.1(135) Purpose
88.2(135) Definitions
88.3(135) Eligibility for the volunteer health care provider program
88.4(135) Sponsor entity and protected clinic
88.5(135) Covered health care services
88.6(135) Defense and indemnification
88.7(135) Term of agreement
88.8(135) Reporting requirements and duties
88.9(135) Revocation of agreement
88.10(135) Procedure for revocation of agreement
88.11(135) Effect of suspension or revocation
88.12(135) Protection denied
88.13(135) Board notice of disciplinary action

88.14(135) Effect of eligibility protection
88.15(135) Reporting by a protected clinic or sponsor entity

CHAPTER 89
DECISION-MAKING ASSISTANCE PROGRAM
AND PARENTAL NOTIFICATION OF INTENT
TO TERMINATE A PREGNANCY THROUGH ABORTION

89.1(135L) Title
89.2(135L) Purpose and scope
89.3(135L) Definitions
89.4 to 89.10 Reserved

DECISION-MAKING ASSISTANCE PROGRAM

89.11(135L) Purpose
89.12(135L) Initial appointment of a pregnant minor with a licensed physician from whom an abortion is sought and certification procedure for the decision-making assistance program
89.13 to 89.20 Reserved

NOTIFICATION PROCESS

89.21(135L) Notification of parent prior to the performance of abortion on a pregnant minor
89.22(135L) Exceptions to notification of parent
89.23(135L) Physician compliance
89.24 and 89.25 Reserved
89.26(135L) Fraudulent practice

CHAPTER 90
IOWA CHILD DEATH REVIEW TEAM

90.1(135) Purpose
90.2(135) Definitions
90.3(135) Agency
90.4(135) Membership
90.5(135) Officers
90.6(135) Meetings
90.7(135) Expenses of team members
90.8(135) Team responsibilities
90.9(135) Liaisons
90.10(135) Confidentiality and disclosure of information
90.11(135) Immunity and liability

CHAPTER 91
IOWA DOMESTIC ABUSE DEATH REVIEW TEAM

91.1(77GA,ch1221) Purpose
91.2(77GA,ch1221) Definitions
91.3(77GA,ch1221) Agency
91.4(77GA,ch1221) Membership
91.5(77GA,ch1221) Officers
91.6(77GA,ch1221) Meetings
91.7(77GA,ch1221) Expenses of team members
91.8(77GA,ch1221) Team responsibilities
91.9(77GA,ch1221) Liaisons
91.10(77GA,ch1221) Confidentiality and disclosure of information
91.11(77GA,ch1221) Immunity and liability

CHAPTER 92
IOWA FATALITY REVIEW COMMITTEE

92.1(135) Purpose
92.2(135) Definitions
92.3(135) Committee
92.4(135) Formation of the committee
92.5(135) Committee protocol for review
92.6(135) Content of report
92.7(135) Consultation with county attorney
92.8(135) Supplemental report
92.9(135) Confidentiality and disclosure of information
92.10(135) Immunity and liability

CHAPTER 93
ABUSE EDUCATION REVIEW PANEL

93.1(135) Purpose
93.2(135) Panel
93.3(135) Meetings
93.4(135) Duties
93.5(135) Standards for approval of curricula
93.6(135) Process for application review and approval
93.7(135) Process for appeal

CHAPTER 94
CHILD PROTECTION CENTER GRANT PROGRAM

94.1(135) Scope and purpose
94.2(135) Definitions
94.3(135) Goals
94.4(135) Review process
94.5(135) Eligibility and criteria
94.6(135) Appeals

CHAPTER 95
CERTIFICATE OF BIRTH—REGISTRATION FEE

95.1(144) Birth certificates—when filing fee required
95.2(144) Collection
95.3(144) Waivers
95.4(144) Fee deposit
95.5(144) Responsibilities of institutions
95.6 Reserved
95.7(144) County registrars
95.8(144) State registrar
95.9(144) Retention
95.10(144) Forms

CHAPTER 96
VITAL RECORDS

96.1(144) Definitions
96.2(144) Specification
96.3(144) Handling
96.4(144) Fees
96.5(144) Additional statistical data
96.6(144) General public accessibility

96.7(144) Direct tangible interest accessibility
96.8(144) County custodians' responsibility for maintenance of confidentiality

CHAPTER 97
Reserved

CHAPTER 98
FORMS UNIFORM
98.1(144) Forms property of Iowa department of public health
98.2(144) Preparation of certificates

CHAPTER 99
DELAYED BIRTH, DEATH AND MARRIAGE REGISTRATION
99.1(144) Foundling registration
99.2(144) Birth registration—five days to one year
99.3(144) Delayed birth registration—after one year
99.4(144) Who may file delayed certificate
99.5(144) Delayed certificate to be signed
99.6(144) Facts to be established for delayed registration of birth
99.7(144) Documentary evidence
99.8(144) Abstraction and certification by state registrar
99.9(144) Documents returned
99.10(144) Cancellation after one year
99.11(144) Duties of county registrar
99.12(144) Delayed registration of death records
99.13(144) Delayed registration of marriage records

CHAPTER 100
ESTABLISHMENT OF NEW CERTIFICATES OF BIRTH
100.1(144) Certificates, forms
100.2(144) Data required
100.3(144) Certificate following adoption
100.4(144) Certificate following legitimation
100.5(144) Certificate following determination of paternity
100.6(144) Minimum information required
100.7(144) Original certificate to be sealed

CHAPTER 101
DEATH CERTIFICATION, AUTOPSY AND DISINTERMENT
101.1(144) Report of autopsy findings
101.2(144) Attending physician not available
101.3(144) Hospital or institution may assist in preparation of certificate
101.4(135) Removal of dead body or fetus
101.5(144) Burial-transit permit
101.6(135) Transportation and disposition of dead body or fetus
101.7(135,144) Disinterment permits
101.8(144) Extension of time

CHAPTER 102
CORRECTION AND AMENDMENT OF VITAL RECORDS
102.1(144) Application to amend records
102.2(144) Correction of minor errors within first year
102.3(144) Amendments or major corrections
102.4(144) Correction of same item more than once

102.5(144) Methods of amending certificates
102.6(144) Amendment of birth certificate by paternity affidavit
102.7(144) Change of given names within first year
102.8(144) Addition of given names until seventh birthday
102.9(144) Addition of given name after seventh birthday
102.10(144) Legal change of name

CHAPTER 103
CONFIDENTIALITY OF RECORDS
103.1(144) Disclosure of data

CHAPTER 104
COPIES OF VITAL RECORDS
104.1(144) Certified copies and verifications
104.2(144) Cancellation of fraudulent records

CHAPTER 105
DECLARATION OF PATERNITY REGISTRY
105.1(144) Definitions
105.2(144) Registry established
105.3(144) Information to be provided
105.4(144) Change of address
105.5(144) Fees
105.6(144) Access to registry information
105.7(144) Revocation
105.8(144) Forms

CHAPTER 106
REPORTING OF TERMINATION OF PREGNANCY
106.1(144) Definitions
106.2(144) Report of termination of pregnancy
106.3(144) Confidentiality of released information
106.4(144) Confidentiality of reports submitted
106.5(144) Provider codes
106.6(144) Unlawful acts—punishment

CHAPTER 107
MUTUAL CONSENT VOLUNTARY ADOPTION REGISTRY
107.1(78GA,HF497) Definitions
107.2(78GA,HF497) Eligibility
107.3(78GA,HF497) Exception
107.4(78GA,HF497) Application
107.5(78GA,HF497) Notification
107.6(78GA,HF497) Withdrawal
107.7(78GA,HF497) Fees

CHAPTER 108
Reserved

CHAPTER 109
PRESCRIPTION DRUG DONATION REPOSITORY PROGRAM
109.1(135M) Definitions
109.2(135M) Purpose
109.3(135M) Eligibility criteria for program participation by medical facilities and pharmacies

109.4(135M) Standards and procedures for accepting donated prescription drugs and supplies
109.5(135M) Standards and procedures for inspecting and storing donated prescription drugs and supplies
109.6(135M) Standards and procedures for dispensing donated prescription drugs and supplies
109.7(135M) Eligibility criteria for individuals to receive donated prescription drugs and supplies
109.8(135M) Forms and record keeping
109.9(135M) Handling fee
109.10(135M) List of drugs and supplies program will accept
109.11(135M) Exemption from disciplinary action, civil liability and criminal prosecution

CHAPTER 110
CENTER FOR RURAL HEALTH
AND PRIMARY CARE

110.1(135) Purpose and scope
110.2(135) Definitions
110.3(135) Responsibilities of the center
110.4(135) Advisory committee to the center for rural health and primary care
110.5(135) Organization
110.6(135) Meetings
110.7 to 110.10 Reserved

PRIMECARRE COMMUNITY GRANT PROGRAM

110.11(135) Purpose
110.12 to 110.15 Reserved

PRIMECARRE PRIMARY CARE PROVIDER
COMMUNITY SCHOLARSHIP PROGRAM

110.16(135) Purpose
110.17 to 110.20 Reserved

PRIMECARRE PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

110.21(135) Purpose

CHAPTER 111
Reserved

CHAPTER 112
BIOLOGICAL AGENT RISK ASSESSMENT

112.1(135) Purpose
112.2(135) Definitions
112.3(135) Biosecurity council established
112.4(135) Biological agent risk assessment
112.5(135) Requests for biological agent information
112.6(135) Exceptions

CHAPTER 113
PUBLIC HEALTH RESPONSE TEAMS

113.1(135) Definitions
113.2(135) Purpose
113.3(135) Sponsor agency
113.4(135) Public health response team members
113.5(135) Disaster medical assistance team
113.6(135) Environmental health response team
113.7(135) Legal and other protections
113.8(135) Reporting requirements and duties

CHAPTER 114
PREPAREDNESS ADVISORY COMMITTEE

114.1(135) Definitions
114.2(135) Purpose
114.3(135) Appointment
114.4(135) Membership
114.5(135) Officers
114.6(135) Meetings
114.7(135) Subcommittees
114.8(135) Expenses of preparedness advisory committee voting members
114.9(135) Gender balance

CHAPTERS 115 to 123
Reserved

CHAPTER 124
INTERAGENCY COORDINATING COUNCIL
FOR THE STATE MEDICAL EXAMINER

124.1(691) Purpose
124.2(691) Membership
124.3(691) Meetings
124.4(691) Duties
124.5(691) Minutes

CHAPTER 125
ADVISORY COUNCIL FOR THE STATE MEDICAL EXAMINER

125.1(691) Purpose
125.2(691) Membership
125.3(691) Meetings
125.4(691) Duties
125.5(691) Minutes

CHAPTER 126
STATE MEDICAL EXAMINER

126.1(144,331,691) Definitions
126.2 Reserved
126.3(691) Fees for autopsies and related services and reimbursement for related expenses
126.4(691) Fees for tissue recovery

CHAPTER 127
COUNTY MEDICAL EXAMINERS

127.1(144,331,691) Definitions
127.2(331,691) Duties of medical examiners—jurisdiction over deaths which affect the public interest
127.3(331,691) Autopsies
127.4(331,691) Fees
127.5(144,331,691) Death certificates—deaths affecting the public interest
127.6(331,691) Cremation
127.7(331,691) County medical examiner investigators
127.8(331,691) Deputy county medical examiners
127.9(331,691) Failure to comply with rules
127.10(331,691,22) Confidentiality
127.11(331,691,670) Indemnification

CHAPTERS 128 and 129
Reserved

CHAPTER 130
EMERGENCY MEDICAL SERVICES ADVISORY COUNCIL

130.1(147A) Definitions
130.2(147A) Purpose
130.3(147A) Appointment
130.4(147A) Absences
130.5(147A) Officers
130.6(147A) Meetings
130.7(147A) Subcommittees
130.8(147A) Expenses of advisory council members
130.9(147A) Gender balance

CHAPTER 131
EMERGENCY MEDICAL SERVICES
PROVIDER EDUCATION/TRAINING/CERTIFICATION

131.1(147A) Definitions
131.2(147A) Emergency medical care providers—requirements for enrollment in training programs
131.3(147A) Emergency medical care providers—EMS provider authority
131.4(147A) Emergency medical care providers—certification, renewal standards, procedures, continuing education, and fees
131.5(147A) Training programs—standards, application, inspection and approval
131.6(147A) Continuing education providers—approval, record keeping and inspection
131.7(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of emergency medical care personnel certificates or renewal
131.8(147A) Complaints and investigations—denial, citation and warning, probation, suspension, or revocation of training program or continuing education provider approval or renewal
131.9(147A) Reinstatement of certification
131.10(147A) Certification denial
131.11(147A) Emergency adjudicative proceedings
131.12(147A) Complaints, investigations and appeals

CHAPTER 132
EMERGENCY MEDICAL SERVICES—SERVICE PROGRAM AUTHORIZATION

132.1(147A) Definitions
132.2(147A) Authority of emergency medical care provider
132.3 to 132.6 Reserved
132.7(147A) Service program—authorization and renewal procedures, inspections and transfer or assignment of certificates of authorization
132.8(147A) Service program levels of care and staffing standards
132.9(147A) Service program—off-line medical direction
132.10(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal
132.11 to 132.13 Reserved
132.14(147A) Temporary variances
132.15(147A) Transport options for fully authorized paramedic service programs

CHAPTER 133
WHITE FLASHING LIGHT AUTHORIZATION

133.1(321) Definitions
133.2(321) Purpose
133.3(321) Application
133.4(321) Approval, denial, probation, suspension and revocation of authorization
133.5(321) Appeal of denial, probation, or revocation of authorization

CHAPTER 134
TRAUMA CARE FACILITY CATEGORIZATION
AND VERIFICATION

134.1(147A) Definitions
134.2(147A) Trauma care facility categorization and verification
134.3(147A) Complaints and investigations and appeals—denial, citation and warning, probation, suspension, and revocation of verification as a trauma care facility

CHAPTER 135
TRAUMA TRIAGE AND TRANSFER PROTOCOLS

135.1(147A) Definitions
135.2(147A) Trauma triage and transfer protocols
135.3(147A) Offenses and penalties

CHAPTER 136
TRAUMA REGISTRY

136.1(147A) Definitions
136.2(147A) Trauma registry
136.3(147A) Offenses and penalties

CHAPTER 137
TRAUMA EDUCATION AND TRAINING

137.1(147A) Definitions
137.2(147A) Initial trauma education for Iowa's trauma system
137.3(147A) Continuing trauma education for Iowa's trauma system
137.4(147A) Offenses and penalties

CHAPTER 138
TRAUMA SYSTEM EVALUATION QUALITY IMPROVEMENT COMMITTEE

138.1(147A) Definitions
138.2(147A) System evaluation quality improvement committee (SEQIC)

CHAPTER 139
IOWA LAW ENFORCEMENT EMERGENCY CARE PROVIDER

139.1(147A) Definitions
139.2(147A) Authority of Iowa law enforcement emergency care provider
139.3(147A) Iowa law enforcement emergency care providers—requirements for enrollment in training programs
139.4(147A) Iowa law enforcement emergency care providers—certification, renewal standards and procedures, and fees
139.5(147A) Iowa law enforcement training programs
139.6(147A) Law enforcement AED service program authorization

CHAPTER 140
EMERGENCY MEDICAL SERVICES SYSTEM DEVELOPMENT GRANTS FUND

140.1(135) Definitions
140.2(135) Purpose
140.3(135) County EMS associations
140.4(135) County EMS system development grants

CHAPTER 141
LOVE OUR KIDS GRANT

141.1(321) Definitions
141.2(321) Purpose
141.3(321) Funding limitations
141.4(321) Use of funds
141.5(321) Application process
141.6(321) Application denial or partial denial—appeal

CHAPTER 142
OUT-OF-HOSPITAL DO-NOT-RESUSCITATE ORDERS

142.1(144A) Definitions
142.2(144A) Purpose
142.3(144A,147A) Responsibilities of the department
142.4(144A,147A) EMS providers
142.5(144A) Guidelines for non-EMS health care providers, patients, and organizations
142.6(144A) Revocation of the out-of-hospital do-not-resuscitate order
142.7(144A) Personal wishes of family members or other individuals who are not authorized to act on the patient's behalf
142.8(144A) Transfer of patients
142.9(144A) Application to existing orders

CHAPTER 143
AUTOMATED EXTERNAL DEFIBRILLATOR PROGRAM

AUTOMATED EXTERNAL DEFIBRILLATOR GRANT PROGRAM

143.1(135) Purpose
143.2(135) Definitions
143.3(135) Application process
143.4(135) Early defibrillation program
143.5(135) Review process
143.6(135) Appeals
143.7 to 143.9 Reserved

AUTOMATED EXTERNAL DEFIBRILLATOR MAINTENANCE

143.10(135) Purpose
143.11(135) Definition
143.12(135) AED maintenance

CHAPTER 144
EMERGENCY MEDICAL SERVICES—AIR MEDICAL SERVICE
PROGRAM AUTHORIZATION

144.1(147A) Definitions
144.2(147A) Authority of emergency medical care provider
144.3(147A) Air ambulance service program—authorization and renewal procedures, inspections and transfer or assignment of certificates of authorization
144.4(147A) Service program levels of care and staffing standards

144.5(147A) Air ambulance service program—off-line medical direction
144.6(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal
144.7(147A) Temporary variances
144.8(147A) Transport options for air medical services

CHAPTERS 145 to 149
Reserved

CHAPTER 150
IOWA REGIONALIZED SYSTEM OF PERINATAL HEALTH CARE

150.1(135,77GA,ch1221) Purpose and scope
150.2(135,77GA,ch1221) Definitions
150.3(135,77GA,ch1221) Perinatal guidelines advisory committee
150.4(135,77GA,ch1221) Categorization and selection of level of care designation
150.5(135,77GA,ch1221) Recommendation by the statewide perinatal care program
150.6(135,77GA,ch1221) Level I hospitals
150.7(135,77GA,ch1221) Level II hospitals
150.8(135,77GA,ch1221) Level II regional centers
150.9(135,77GA,ch1221) Level II regional neonatology centers
150.10(135,77GA,ch1221) Level III centers
150.11(135,77GA,ch1221) Grant or denial of certificate of verification; and offenses and penalties
150.12(135,77GA,ch1221) Prohibited acts
150.13(135,77GA,ch1221) Construction of rules

CHAPTER 151
TOBACCO USE PREVENTION AND CONTROL
COMMUNITY PARTNERSHIP INITIATIVE

151.1(142A) Scope
151.2(142A) Community partnership areas
151.3(142A) Community partnerships
151.4(142A) Application requirements for community partnerships
151.5(142A) Performance indicators
151.6(142A) Application deadline
151.7(142A) Distribution of funding
151.8(142A) Gifts

CHAPTER 152
TOBACCO USE PREVENTION AND CONTROL FUNDING PROCESS

152.1(78GA,HF2565) Scope and purpose
152.2(78GA,HF2565) Funding
152.3(78GA,HF2565) Appeals

CHAPTER 153
SMOKEFREE AIR

153.1(82GA,HF2212) Purpose and scope
153.2(82GA,HF2212) Definitions
153.3(82GA,HF2212) Prohibition of smoking
153.4(82GA,HF2212) Areas where smoking not regulated
153.5(82GA,HF2212) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited

153.6(82GA,HF2212) Duties of other state agencies and political subdivisions
153.7(82GA,HF2212) Leases
153.8(82GA,HF2212) Complaints and enforcement
153.9(82GA,HF2212) Limitation of rules

CHAPTER 154
Reserved

CHAPTER 155
LICENSURE STANDARDS FOR SUBSTANCE ABUSE AND PROBLEM GAMBLING TREATMENT PROGRAMS

155.1(125,135) Definitions
155.2(125,135) Licensing
155.3(125,135) Type of licenses
155.4(125,135) Nonassignability; program closure
155.5(125,135) Application procedures
155.6(125,135) Application review
155.7(125,135) Inspection of licensees
155.8(125,135) Licenses—renewal
155.9(125,135) Corrective action plan
155.10(125,135) Grounds for denial of initial license
155.11(125,135) Suspension, revocation, or refusal to renew a license
155.12(125,135) Contested case hearing
155.13(125,135) Rehearing application
155.14(125,135) Judicial review
155.15(125,135) Reissuance or reinstatement
155.16(125,135) Complaints and investigations
155.17 Reserved
155.18(125,135) Deemed status
155.19(125,135) Funding
155.20(125,135) Inspection
155.21(125,135) General standards for all treatment programs
155.22(125,135) Inpatient, residential, and halfway house safety
155.23(125,135) Specific standards for inpatient, residential, and halfway house service
155.24(125,135) Specific standards for inpatient, residential, and halfway house services for juveniles
155.25(125,135) Specific standards for assessment and evaluation programs
155.26 to 155.34 Reserved
155.35(125,135) Specific standards for opioid treatment programs

CHAPTER 156
LICENSURE STANDARDS FOR SUBSTANCE ABUSE TREATMENT PROGRAMS IN CORRECTIONAL FACILITIES

156.1(125) Definitions
156.2(125) Inspection
156.3(125) General standards for all correctional substance abuse treatment programs

CHAPTER 157
STANDARDS FOR SUBSTANCE ABUSE TREATMENT AND ASSESSMENT PROGRAMS AND THE OPERATING A MOTOR VEHICLE WHILE INTOXICATED (OWI) LAW

157.1(125) Definitions
157.2(125) Screening, evaluation, treatment, and drinking drivers course

157.3(125) Screening, evaluation, treatment, and drinking drivers course completion
157.4(125) Cost of evaluation and treatment
157.5(125) Timeliness
157.6(125) Confidentiality
157.7(125) Records
157.8(125) Reciprocity

CHAPTER 158
REGIONS FOR SUBSTANCE ABUSE PREVENTION AND TREATMENT

158.1(125) Service areas established
158.2(125) Request for a change in service areas
158.3(125) Application
158.4(125) Notification of affected parties
158.5(125) Public hearing
158.6(125) Proposed decision
158.7(125) Change during term of contract
158.8(125) State board of health review
158.9(125) State board of health decision

CHAPTERS 159 to 169
Reserved

CHAPTER 170
ORGANIZATION OF THE DEPARTMENT

170.1(17A,135) Definitions
170.2(17A,135) Mission
170.3(17A,136) State board of health
170.4(17A,135) Director of the department of public health
170.5(17A,135) Deputy director
170.6(17A,135) Executive team
170.7(17A,135) Administrative divisions of the department
170.8(17A) Central office
170.9(17A) Business hours
170.10(17A) Submission of materials
170.11(17A) Requests for information

CHAPTER 171
PETITIONS FOR RULE MAKING

171.1(17A) Petition for rule making
171.2(17A) Briefs
171.3(17A) Inquiries
171.4(17A) Department consideration

CHAPTER 172
DECLARATORY ORDERS

172.1(17A) Petition for declaratory order
172.2(17A) Notice of petition
172.3(17A) Intervention
172.4(17A) Briefs
172.5(17A) Inquiries
172.6(17A) Service and filing of petitions and other papers
172.7(17A) Consideration
172.8(17A) Action on petition

172.9(17A) Refusal to issue order
172.10(17A) Contents of declaratory order—effective date
172.11(17A) Copies of orders
172.12(17A) Effect of a declaratory order

CHAPTER 173
CONTESTED CASES

173.1(17A) Scope and applicability
173.2(17A) Definitions
173.3(17A) Time requirements
173.4(17A) Requests for contested case proceeding
173.5(17A) Notice of hearing
173.6(17A) Presiding officer
173.7(17A) Waiver of procedures
173.8(17A) Telephone proceedings
173.9(17A) Disqualification
173.10(17A) Consolidation—severance
173.11(17A) Pleadings
173.12(17A) Service and filing of pleadings and other papers
173.13(17A) Discovery
173.14(17A,135) Subpoenas
173.15(17A) Motions
173.16(17A) Prehearing conference
173.17(17A) Continuances
173.18(17A) Withdrawals
173.19(17A) Intervention
173.20(17A) Hearing procedures
173.21(17A) Evidence
173.22(17A) Default
173.23(17A) Ex parte communication
173.24(17A) Recording costs
173.25(17A) Interlocutory appeals
173.26(17A) Final decision
173.27(17A) Appeals and review
173.28(17A) Applications for rehearing
173.29(17A) Stays of department actions
173.30(17A) No factual dispute contested cases
173.31(17A) Emergency adjudicative proceedings

CHAPTER 174
AGENCY PROCEDURE FOR RULE MAKING
(Uniform Rules)

174.3(17A) Public rule-making docket
174.4(17A) Notice of proposed rule making
174.5(17A) Public participation
174.6(17A) Regulatory flexibility analysis
174.11(17A) Concise statement of reasons
174.13(17A) Agency rule-making record

CHAPTER 175
FAIR INFORMATION PRACTICES AND PUBLIC RECORDS

175.1(17A,22) Definitions
175.2(17A,22) Statement of policy

175.3(17A,22) Requests for access to records
175.4(17A,22) Access to confidential records
175.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination
175.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records
175.7(17A,22) Consent to disclosure by the subject of a confidential record
175.8(17A,22) Notice to suppliers of information
175.9(17A,22) Disclosures without the consent of the subject
175.10(17A,22) Routine use
175.11(17A,22) Consensual disclosure of confidential records
175.12(17A,22) Release to subject
175.13(17A,22) Availability of records
175.14(17A,22) Personally identifiable information
175.15(17A,22) Other groups of records
175.16(17A,22) Data processing systems
175.17(17A,22) Applicability

CHAPTER 176
CRITERIA FOR AWARDS OR GRANTS

176.1(135,17A) Purpose
176.2(135,17A) Definitions
176.3(135,17A) Exceptions
176.4(135,17A) Requirements
176.5(135,17A) Review process (competitive applications only)
176.6 Reserved
176.7(135,17A) Public notice of available funds
176.8(135,17A) Appeals

CHAPTER 177
HEALTH DATA

177.1(76GA,ch1212) Purpose
177.2(76GA,ch1212) Definitions
177.3(76GA,ch1212) Description of data to be submitted
177.4(76GA,ch1212) Department studies
177.5(76GA,ch1212) Fees
177.6(76GA,ch1212) Patient confidentiality
177.7(76GA,ch1212) Department contracting
177.8(76GA,ch1212) Address and specification for data submissions

CHAPTER 178
VARIANCES AND WAIVERS OF PUBLIC HEALTH
ADMINISTRATIVE RULES

178.1(17A,135) Waivers
178.2(17A,135) Sample petition for waiver

CHAPTERS 179 to 190
Reserved

CHAPTER 191
ADVISORY BODIES OF THE DEPARTMENT

191.1(135) Definitions
191.2(135) Purpose

191.3(135) Appointment
191.4(135) Officers
191.5(135) Meetings
191.6(135) Subcommittees
191.7(135) Expenses of advisory body members
191.8(135) Gender balance

CHAPTER 192
CHILD SUPPORT NONCOMPLIANCE

192.1(252J) Definitions
192.2(252J) Issuance or renewal of a license—denial
192.3(252J) Suspension or revocation of a license
192.4(17A,22,252J) Sharing of information

CHAPTER 193
IMPAIRED PRACTITIONER REVIEW COMMITTEE

193.1(272C) Definitions
193.2(272C) Purpose
193.3(272C) Composition of the committee
193.4(272C) Eligibility
193.5(272C) Terms of participation in the impaired practitioner recovery program
193.6(272C) Limitations
193.7(272C) Confidentiality

CHAPTER 194
NONPAYMENT OF STATE DEBT

194.1(272D) Definitions
194.2(272D) Issuance or renewal of a license—denial
194.3(272D) Suspension or revocation of a license
194.4(272D) Sharing of information

CHAPTER 195
STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH AGREEMENT
FOR PAYMENT OF OBLIGATION

195.1(261) General definitions
195.2(261) Issuance or renewal of a license—denial
195.3(261) Suspension or revocation of a license
195.4(17A,22,261) Sharing of information

CHAPTERS 196 to 200
Reserved

CHAPTER 201
ORGANIZED DELIVERY SYSTEMS

LICENSURE AND REGULATION

201.1(135,75GA,ch158) Purpose and scope
201.2(135,75GA,ch158) Definitions
201.3(135,75GA,ch158) Application
201.4(135,75GA,ch158) Governing body
201.5(135,75GA,ch158) Service area/geographic access
201.6(135,75GA,ch158,78GA,ch41) Provider network and contracts; treatment and services
201.7(135,75GA,ch158) Complaints
201.8(135,75GA,ch158) Accountability

201.9(135,75GA,ch158) Reporting
201.10(135,75GA,ch158) Evaluation
201.11(135,75GA,ch158) Annual report
201.12(135,75GA,ch158) Finance and solvency
201.13(135,75GA,ch158) Investment
201.14(135,75GA,ch158) Rating practices
201.15(135,75GA,ch158) Name
201.16(135,75GA,ch158) Change in organizational documents or control
201.17(135,75GA,ch158) Appeal
201.18(135,78GA,ch41) External review
201.19 Reserved

ANTITRUST

201.20(135,75GA,ch158) Purpose
201.21(135,75GA,ch158) Definitions
201.22(135,75GA,ch158) Scope
201.23(135,75GA,ch158) Application
201.24(135,75GA,ch158) Notice and comment
201.25(135,75GA,ch158) Procedure for review of applications
201.26(135,75GA,ch158) Criteria for decision
201.27(135,75GA,ch158) Decision
201.28(135,75GA,ch158) Appeal
201.29(135,75GA,ch158) Supervision after approval
201.30(135,75GA,ch158) Revocation

CHAPTER 202
CERTIFICATE OF NEED PROGRAM

202.1(135) Definitions
202.2(135) Letter of intent
202.3(135) Preliminary review
202.4(135) Submission of application
202.5(135) Organizational procedures
202.6(135) Public hearing on application
202.7(135) Summary review
202.8(135) Extension of review time
202.9(135) Rehearing of certificate of need decision
202.10(135) Status reports to affected persons
202.11(135) Finality
202.12(135) Project progress reports
202.13(135) Request for extension of certificate
202.14(135) Application changes after approval
202.15(135) Sanctions

CHAPTER 203
STANDARDS FOR CERTIFICATE OF NEED REVIEW

203.1(135) Acute care bed need
203.2(135) Cardiac catheterization and cardiovascular surgery standards
203.3(135) Radiation therapy or radiotherapy standards
203.4(135) Computerized tomography standards
203.5(135) Long-term care
203.6(135) Bed need formula for mentally retarded
203.7(135) End-stage renal disease standards
203.8(135) Financial and economic feasibility

203.9(135) Obstetrical services and neonatal intensive care unit standards
203.10(135) Designated pediatric units standards
203.11(135) Designated inpatient substance abuse treatment unit standards
203.12(135) Magnetic resonance imaging services standards
203.13(135) Positron emission tomography services standards

CHAPTER 204
UNIFORM REPORTING REQUIREMENTS

204.1(135) Reporting requirements
204.2(135) Initial reporting period

CHAPTER 6
VENEREAL DISEASE PROPHYLACTICS

[Prior to 7/29/87, Health Department[470]]

Rescinded IAB 6/2/10, effective 7/7/10

CHAPTER 29
PLUMBING AND MECHANICAL SYSTEMS BOARD— APPLICATION, LICENSURE, AND EXAMINATION

641—29.1(105) Definitions. For purposes of these rules, the following definitions shall apply:

"Applicable" means having relevance; appropriate.

"Apprentice" means any person, other than a helper, journeyperson, or master, who, as a principal occupation, is engaged in working as an employee of a plumbing, HVAC, refrigeration, or hydronic systems contractor under the supervision of either a master or a journeyperson and is progressing toward completion of an apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while learning and assisting in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

"Board" means the plumbing and mechanical systems board.

"Corresponding" means the same discipline.

"Department" means the Iowa department of public health.

"Disconnect/reconnect plumbing technician specialty license" means a sublicense under a plumbing license to perform work from the appliance shutoff valve or fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than 3 feet from the appliance or fixture.

"Emergency repairs" means the repair of water pipes to prevent imminent damage to property.

"Hearth systems specialty license" means a sublicense under an HVAC license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within 3 feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

"HVAC" means heating, ventilation, air conditioning, and ducted systems. "HVAC" includes all natural, propane, liquid propane, or other gas lines associated with any component of an HVAC system.

"Hydronic" means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any comfort heating or comfort cooling system or appliance using a liquid, water, or steam as the heating or cooling media. "Hydronic" includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system.

"Inactive license" means a license that is available for a plumbing, HVAC, refrigeration, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline at that license level.

"Journeyperson" means any person, other than a master, who, as a principal occupation, is engaged as an employee of, or otherwise working under the direction of, a master in the design, installation, and repair of plumbing, HVAC, refrigeration, or hydronic systems, as applicable.

"Licensee" means a person or entity licensed to operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board.

"Master" means any person who works in the planning or superintending of the design, installation, or repair of plumbing, HVAC, refrigeration, or hydronic systems and is otherwise lawfully qualified to conduct the business of plumbing, HVAC, refrigeration, or hydronic systems, and who is familiar with the laws and rules governing the same.

"Mechanical systems" means HVAC, refrigeration, and hydronic systems.

"Medical gas system installer" means any person who installs or repairs medical gas piping, components, and vacuum systems, including brazers, who has been issued a valid certification from

the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board.

"Plumbing" means all potable water building supply and distribution pipes, all plumbing fixtures and traps, all drainage and vent pipes, and all building drains and building sewers, storm sewers, and storm drains, including their respective joints and connections, devices, receptors, and appurtenances within the property lines of the premises, and including the connection to sanitary sewer, storm sewer, and domestic water mains. "Plumbing" includes potable water piping, potable water treating or using equipment, medical gas piping systems, fuel gas piping, water heaters and vents, including all natural, propane, liquid propane, or other gas lines associated with any component of a plumbing system.

"Refrigeration" means any system of refrigeration regardless of the level of power, if such refrigeration is intended to be used for the purpose of food and product preservation and is not intended to be used for comfort systems.

"Routine maintenance" means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, HVAC, refrigeration, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas or steam piping permanent repairs except for traps or strainers. Routine maintenance shall include emergency repairs. "Routine maintenance" does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

"Service technician HVAC specialty license" means a sublicense under an HVAC license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than 3 feet away from the appliance.

"Surety bond" means a performance bond written by an entity licensed to do business in this state which guarantees that a contractor will fully perform the contract and which guarantees against breach of that contract.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.2(105) Available licenses and general requirements. Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

29.2(1) *Apprentice license.* An applicant for an apprentice license shall:

a. File an application and pay application fees in accordance with 641—29.5(105).

b. Be enrolled in an applicable apprentice program which is registered with the United States Department of Labor Office of Apprenticeship.

c. Certify that the applicant will work under the supervision of a licensed journeyperson or master in the applicable discipline by providing the department with the United States Department of Labor Office of Apprenticeship identification number and sponsor identification number.

29.2(2) *Journeyperson license.*

a. An applicant for a journeyperson license shall:

(1) File an application and pay application fees in accordance with rule 641—29.5(105).

(2) Pass the state journeyperson licensing examination in the applicable discipline.

(3) Provide the board with evidence that the applicant has completed at least four years of practical experience as an apprentice. Commencing January 1, 2010, the four years of practical experience required by this paragraph must be an apprenticeship training program registered by the United States Department of Labor Office of Apprenticeship. Documentation must be submitted on a form provided by the board.

b. Notwithstanding the journeyperson licensure requirements set forth in paragraph 29.2(2)*"a,"* an applicant who possesses a master level license and who seeks a journeyperson license in the same discipline shall file an application and pay application fees in accordance with rule 641—29.5(105).

29.2(3) *Master license.* An applicant for a master license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Pass the state master licensing examination for the applicable discipline.

c. Provide the board with evidence that the applicant:

(1) Has previously been licensed as a master in the applicable discipline; or

(2) Has previously been licensed as a journeyperson in the applicable discipline and has at least two years of journeyperson experience in the applicable discipline.

29.2(4) *Contractor license.* An applicant for a contractor license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the applicant's Iowa workforce development contractor registration number.

c. Provide the board with evidence that the applicant maintains a permanent place of business.

d. Provide the board with evidence of a public liability insurance policy issued by an entity licensed to do business in this state with a minimum coverage amount of $500,000 and:

(1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the policy, or

(2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the insurance policy is obtained by the entity and that the insurance covers all plumbing or mechanical work performed by the entity.

e. Provide the board with evidence of a surety bond issued by an entity licensed to do business in this state in a minimum amount of $5,000 and:

(1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the surety bond, or

(2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the surety bond was obtained by the entity and that the surety bond covers all plumbing or mechanical work performed by the entity.

f. Provide a certificate to the board that the public liability insurance policy required under paragraph 29.2(4)*"d"* and the surety bond required under paragraph 29.2(4)*"e"* shall not be canceled without the entity first giving 15 days' written notice to the board.

g. Provide the board with evidence that the applicant holds an active master license or employs at least one person who holds an active master license issued under Iowa Code chapter 105.

29.2(5) *Active journeyperson license/inactive master license combination.* An applicant for an active journeyperson license and an inactive master license in the same discipline shall:

a. File an application and pay application fees for both an active journeyperson license and an inactive master license in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant meets the requirements for master licensure under subrule 29.2(3).

c. Provide evidence that the applicant is not performing plumbing, HVAC, refrigeration, or hydronic work for which a master license is required.

d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which a master license is required so long as the applicant's master license is held in inactive status.

29.2(6) *Inactive license.* An applicant for an inactive license that does not fall within subrule 29.2(5) shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant meets the requirements for licensure under rule 641—29.2(105) at the applicable licensure level.

c. Provide the board with evidence that the applicant is not actively engaged working in the plumbing, HVAC, refrigeration, or hydronic disciplines for which licensure is required.

d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which licensure is required so long as the applicant's license is held in inactive status.

29.2(7) *Service technician HVAC specialty license.* An applicant for a service technician HVAC specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant possesses a valid certification from North American Technician Excellence, Inc. or an equivalent authority approved by the board, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(8) *Disconnect/reconnect plumbing technician specialty license.* An applicant for a disconnect/reconnect plumbing technician specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant is receiving or has previously received industry training to perform work covered under this specialty license, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

29.2(9) *Private school or college routine maintenance specialty license.* An applicant for a private school or college routine maintenance specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant is currently employed by a private school or college.

c. Provide the board with evidence that the applicant is performing routine maintenance within the scope of employment with the private school or college.

29.2(10) *Hearth systems specialty license.* An applicant for a hearth systems specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant possesses a valid certification issued by the National Fireplace Institute or equivalent authority approved by the board.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.3(105) Medical gas piping certification. The following certification is required for a person who performs work as a medical gas system installer. An applicant for a medical gas certificate shall:

29.3(1) File an application and pay applicable fees.

29.3(2) Possess valid certification from the National Inspection Testing Certification (NITC) Corporation, or an equivalent authority approved by the board. Documentation must be submitted on a form provided by the board.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.4(105) Minimum qualifications for licensure. The following minimum requirements shall apply to all licenses issued after July 1, 2008.

29.4(1) An applicant for any type of license must be at least 18 years old.

29.4(2) Effective January 1, 2010, all apprentice applicants must have completed a high school education or attained GED equivalent.

29.4(3) An applicant shall have no record of felony conviction relating to the profession as determined by the board.

29.4(4) Rescinded IAB 2/24/10, effective 1/26/10.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.5(105) General requirements for application for licensure. The following criteria shall apply to application for licensure.

29.5(1) On-line or paper application.

a. An applicant shall complete a board-approved application either on-line or on a paper application according to instructions contained in the application.

b. Applications can be completed on-line or on a paper application. Paper applications are available to download at http://www.idph.state.ia.us/eh/plumbing.asp or from the board office by writing to: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

29.5(2) Fees. In order to be processed, each application must be accompanied by the appropriate fees as determined by the board. All fees are nonrefundable.

a. On-line application fees shall be paid by credit card only.

b. A paper application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Board.

29.5(3) If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

29.5(4) No application will be considered by the board without the appropriate verifiable documentation. An applicant must submit the following verifiable documentation:

a. A passing score for a discipline-appropriate examination provided by the testing vendor under contract with the board, when testing is required for a license.

b. Verification that the applicant has met the minimum requirements as defined in 641—29.4(105) and the established employment experience criteria for each type of license.

29.5(5) Complete applications shall be filed with the plumbing and mechanical systems board. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.6(105) Examination.

29.6(1) An applicant for licensure as a plumbing or mechanical system professional that requires a state licensing examination must successfully pass the licensing examination for the discipline.

a. The examination will be administered by the board-approved vendor.

b. The board shall approve the specific examination to be used for each license type.

c. Rescinded IAB 2/24/10, effective 1/26/10.

29.6(2) Examination requirements.

a. The examination will be written and proctored by a nationally recognized testing agency selected by the board through a competitive bid process.

b. The examination will be offered periodically during the year. The time and location will rotate between multiple sites in the state of Iowa, as determined by the department, with approval of the board.

c. The examination will not be subject to review by applicants. The testing vendor shall, upon request from an applicant, provide information about the sections that the applicant failed, but shall not provide an applicant access to actual examination questions or answers. Any fees associated with the review process will be assessed by and payable to the testing vendor. The applicant is responsible for paying all associated examination fees.

d. A score of 75 percent or better will be considered passing.

29.6(3) Examination application requirements.

a. An applicant shall complete and submit a board-approved examination application either on-line or on a paper application a minimum of 15 business days prior to taking an examination. An applicant shall complete the application form according to instructions contained in the application.

b. Examination applications can be completed on-line or on a paper application. Paper applications are available to download at http://www.idph.state.ia.us/eh/plumbing.asp or from the board office by writing to: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

c. Fees. In order to be processed, each application must be accompanied by the appropriate fees as determined by the board. All fees are nonrefundable.

(1) On-line examination application fees shall be paid by credit card only.

(2) A paper examination application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Board.

d. No application will be considered by the board without the appropriate verifiable documentation.

e. The applicant will be notified and issued an examination entrance letter upon approval of the examination application.

f. If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

g. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

h. Examination fees shall be payable directly to the board-approved testing vendor.

(1) All transactions shall be the responsibility of the applicant and testing vendor.

(2) The board shall not be held responsible for refunds from the testing vendor.

i. An applicant shall present current photo identification in order to sit for the examination.

j. An applicant for licensure by examination who does not pass the examination within one year from the original application date will be required to submit a new application.

k. A master examination applicant shall not receive permission to sit for a master examination unless the applicant establishes that the applicant:

(1) Has previously been licensed as a master in the applicable discipline; or

(2) Has previously been licensed as a journeyperson in the applicable discipline and has at least two years of journeyperson experience in the applicable discipline.

l. A journeyperson examination applicant may apply to sit for the examination up to 60 days prior to completion of the 48 months of required apprentice credit, which shall include the granting of advanced standing or credit for previously acquired experience, training, or skills.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.7(105) License renewal.

29.7(1) The period of licensure to operate as a contractor or work as a master, journeyperson or apprentice in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board shall be biennial (every two years).

a. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

b. The licensee is responsible for renewing the license prior to its expiration.

c. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

29.7(2) Specific renewal requirements.

a. A licensee seeking renewal shall:

(1) Meet the continuing education requirements as set forth in rule 641—30.2(105). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

(2) Submit the completed renewal application and renewal fee before the license expiration date.

(3) Provide evidence that the licensee continues to meet the general requirements for licensure under rule 641—29.2(105).

b. Failure to renew a license within two months after the expiration of the license shall not invalidate the license, but a reasonable penalty may be assessed as adopted by rule, in addition to the license renewal fee, to allow reinstatement of the license.

(1) A licensee who allows a license to lapse for one month or less may reinstate and renew the license without examination upon payment of a late fee and appropriate renewal of license fee as defined in 641—subrule 28.1(5).

(2) A licensee who allows a license to lapse for more than one month but less than two months may reinstate and renew the license without examination upon payment of a late fee equivalent to the appropriate license fee and appropriate renewal of license fee as defined in 641—subrule 28.1(5).

c. A licensee who allows a license to lapse for more than two months is required to retake and pass the applicable licensing examination and pay appropriate renewal of license fee as defined in 641—subrule 28.1(5) in order to obtain reinstatement and renewal of that person's license.

(1) A licensee who fails to renew the license by the end of the two-month period has a lapsed license.

(2) A licensee whose license is lapsed may not operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board until the license is reinstated and renewed.

(3) A licensee who operates as a contractor or works in the plumbing, HVAC, refrigeration, or hydronic disciplines or works as a certified medical gas system installer or works in the specialty license disciplines developed by the board in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

[**ARC 8530B**, IAB 2/24/10, effective 1/26/10]

641—29.8(83GA,HF2531) Master license—exception through September 30, 2010.

29.8(1) Notwithstanding paragraph 29.6(3)*"k,"* through September 30, 2010, the board may grant permission to sit for a master examination in one or more applicable discipline to an applicant who has not previously been licensed as a master or journeyperson in the applicable discipline and who possesses at least 48 months of work experience equivalent to that of a licensed master in the applicable discipline between September 30, 2004, and September 30, 2010. For purposes of this subrule, an applicant shall demonstrate the requisite work experience by providing a notarized employer verification statement on a form provided by the board, notarized client verification statements on a form provided by the board, or tax documents such as a Schedule C, Form 1099, Form W-2, or other tax forms establishing such requisite work experience. Upon board verification of work experience, the board shall return any submitted tax documents to the applicant via certified mail.

29.8(2) Notwithstanding subrule 29.2(3), through November 15, 2010, an applicant for a master license may be eligible to receive a master license if:

a. The applicant files an application and pays all applicable fees in accordance with rule 641—29.5(105); and

b. The applicant passes the state master licensing examination for the applicable discipline.

This rule is intended to implement 2010 Iowa Acts, House File 2531, section 100.

[**ARC 8783B**, IAB 6/2/10, effective 5/10/10]

These rules are intended to implement Iowa Code chapter 105.

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CHAPTER 83
EARLY CHILDHOOD IOWA COUNCIL
Rescinded IAB 6/2/10, effective 7/7/10

CHAPTER 84
STATE SUBSTITUTE MEDICAL DECISION-MAKING BOARD
Rescinded IAB 6/2/10, effective 7/7/10

CHAPTER 88
VOLUNTEER HEALTH CARE PROVIDER PROGRAM

641—88.1(135) Purpose. The volunteer health care provider program (VHCPP) is established to defend and indemnify eligible individual volunteer health care providers and protected clinics providing free health care services as provided in Iowa Code section 135.24 and these rules.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.2(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Charitable organization" means a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code.

"Defend" means that the office of the attorney general shall provide the individual volunteer health care provider and protected clinic with legal representation at no cost to the individual volunteer health care provider or protected clinic.

"Department" means the Iowa department of public health.

"Field dental clinic" means a dental clinic temporarily or periodically erected at a location where mobile dental equipment, instruments, or supplies, as necessary, are utilized to provide dental services.

"Free clinic" means a facility, other than a hospital or health care provider's office, which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which has as its sole purpose the provision of health care services without charge to individuals who are otherwise unable to pay for the services.

"Health care facility" means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with mental retardation.

"Health care services" means services received from an individual volunteer health care provider at a protected clinic or sponsor entity, as provided in Iowa Code section 135.24 and these rules, and approved in a protection agreement or sponsor entity agreement. The agreement covers "health care services" that are volunteer, uncompensated services. For those services to qualify as volunteer, uncompensated services under this chapter, the individual volunteer health care provider, protected clinic, or sponsor entity must receive no compensation for any services provided under the agreement and must not bill or accept compensation from the person, or any public or private third-party payor, for the specific services provided by the individual volunteer health care provider covered by the agreement.

"Indemnify" means that the state of Iowa shall pay all sums that the individual volunteer health care provider or protected clinic holding a protection agreement with the VHCPP is legally obligated to pay as damages because of any claim made against the individual volunteer health care provider or protected clinic which arises out of the provision of free health care services rendered or which should have been rendered by the individual volunteer health care provider or protected clinic.

"Individual volunteer health care provider" means any one of the following health care providers who has a fully executed protection agreement with the VHCPP: an emergency medical care provider certified pursuant to Iowa Code chapter 147A; a physician licensed pursuant to Iowa Code chapter 148; a physical therapist licensed pursuant to Iowa Code chapter 148A; an occupational therapist licensed pursuant to Iowa Code chapter 148B; a physician assistant licensed pursuant to Iowa Code chapter 148C and practicing under the supervision of a physician; a podiatrist licensed pursuant to Iowa Code chapter 149; a chiropractor licensed pursuant to Iowa Code chapter 151; a respiratory therapist licensed pursuant to Iowa Code chapter 152B; an advanced registered nurse practitioner, a licensed practical nurse or a registered nurse licensed pursuant to Iowa Code chapter 152 or 152E; a dentist, dental assistant, or dental hygienist licensed or registered pursuant to Iowa Code chapter 153; an optometrist licensed pursuant to Iowa Code chapter 154; a psychologist licensed pursuant to Iowa Code chapter 154B; a bachelor social worker, a master social worker, or an independent social worker licensed pursuant to Iowa Code chapter 154C; a marital and family therapist or mental health counselor licensed pursuant to Iowa Code chapter 154D; a speech pathologist or audiologist licensed pursuant to Iowa Code chapter 154F; or a pharmacist licensed pursuant to Iowa Code chapter 155A.

"Protected clinic" means field dental clinic, free clinic, or specialty health care provider office providing free care to the uninsured and underinsured. Each protected clinic has a signed protection agreement, which provides for defense and indemnification of the protected clinic. The protection agreement shall allow the protected clinic to deliver health care services to uninsured and underinsured persons as an agent of the state.

"Protection agreement" means a signed contract providing for defense and indemnification between an individual volunteer health care provider or protected clinic and the volunteer health care provider program (VHCPP). This agreement shall allow the individual health care provider or protected clinic to deliver health care services to uninsured and underinsured persons as an agent of the state. The agreement covers "health care services" that are volunteer, uncompensated services. For those services to qualify as volunteer, uncompensated services under this chapter, the individual health care provider and protected clinic must receive no compensation for any services provided under the agreement and must not bill or accept compensation from the person, or any public or private third-party payor, for the specific services provided by the individual volunteer health care provider covered by the agreement.

"Specialty care referral network" means the referral network established through the Iowa Collaborative Safety Net Provider Network.

"Specialty health care provider office" means the private office or clinic of an individual specialty health care provider or a group of specialty health care providers as referred by the Iowa Collaborative Safety Net Provider Network established in Iowa Code section 135.153 but does not include a field dental clinic, a free clinic, or a hospital.

"Sponsor entity" or *"sponsor entity clinic"* means a hospital, clinic, free clinic, health care facility, health care referral program, charitable organization or field dental clinic. Each sponsor entity has a fully executed sponsor entity agreement. The sponsor entity agreement shall allow an individual volunteer health care provider to deliver health care services to uninsured and underinsured persons as an agent of the state.

"Sponsor entity agreement" means a signed contract between the VHCPP and a hospital, clinic, free clinic, health care facility, health care referral program, charitable organization, or field dental clinic allowing an individual volunteer health care provider to deliver free health care services through the VHCPP at the sponsor entity location.

"Underinsured" means that a person does not have adequate insurance, which is determined on cost-exposure to family income with at least one of three indicators: (1) out-of-pocket medical expenses equal to or greater than 10 percent of income; (2) out-of-pocket medical expenses equal to or greater than 5 percent of income if income is less than 200 percent of the federal poverty level; and (3) health plan deductibles equal to or greater than 5 percent of income.

"Volunteer health care provider program" or *"VHCPP"* means the volunteer health care provider program of the department.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.3(135) Eligibility for the volunteer health care provider program.

88.3(1) *Individual volunteer health care provider eligibility.* To be eligible for protection as an employee of the state under Iowa Code chapter 669 for a claim arising from covered health care services, an individual volunteer health care provider shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

a. The individual volunteer health care provider shall hold an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, 154F, or 155A. The individual volunteer health care provider shall provide a sworn statement attesting that the license, registration, or certification to practice is free of restrictions. The statement shall describe any disciplinary action that has ever been taken against the individual volunteer health care provider by any professional licensing, registering, or certifying authority or health care facility, including any voluntary surrender of license, registration, or certification or other agreement involving the individual volunteer health care provider's license, registration, or certification to practice or any restrictions on practice, suspension of

privileges, or other sanctions. The statement shall also describe any malpractice suits that have been filed against the individual volunteer health care provider. The statement provided by a pharmacist shall also describe any disciplinary action that has ever been taken against any pharmacy in which the pharmacist has ever been owner, partner, or officer.

(1) Every physician and dentist shall authorize the release of information allowing certified statements to be sent to the board of medicine or dental board from the National Practitioner Data Bank, the Federation of State Medical Boards Disciplinary Data Bank, or State Dental Boards Disciplinary Data Bank, as appropriate, setting forth any malpractice judgment or award or disciplinary action involving the physician or dentist.

(2) Every physical therapist, occupational therapist, physician assistant, podiatrist, chiropractor, respiratory therapist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, optometrist, psychologist, bachelor social worker, master social worker, independent social worker, marital and family therapist, mental health counselor, speech pathologist, and audiologist shall request certified statements directly from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank setting forth any malpractice judgment or award or disciplinary action involving the requester, shall pay the cost for such certified statements and shall submit such certified statements as part of the VHCPP application. Every chiropractor shall also authorize the release of information allowing certified statements to be sent to the board of chiropractic from the Chiropractic Information Network-Board Action Databank (CIN-BAD) setting forth any malpractice judgment or award or disciplinary action involving the chiropractor.

(3) Every pharmacist shall authorize the release of information allowing certified statements to be sent to the board of pharmacy from the National Association of Boards of Pharmacy setting forth any disciplinary action involving the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, and the pharmacist shall pay the cost for such certified statements. Every pharmacist shall also authorize the release of information from the pharmacist's malpractice insurance carrier to be sent to the board of pharmacy, and the pharmacist shall pay the cost for such release. Information released from the pharmacist's malpractice insurance carrier shall include the history and details of all claims that have been filed on behalf of the pharmacist or any pharmacy in which the pharmacist has ever been owner, partner, or officer, or confirmation that there have been no claims.

(4) Every emergency medical care provider shall authorize the release of information allowing information to be sent from the bureau of emergency medical services to the VHCPP setting forth any malpractice judgment or award or disciplinary action involving the requester and shall authorize the release of information allowing such information to be shared with the bureau of emergency medical services by licensing entities within and outside Iowa.

b. Application. The applicant shall submit the following information on forms provided by the VHCPP:

(1) The patients to be served;

(2) The health care services to be provided;

(3) The site where health care services are to be provided;

(4) The days and maximum number of hours when the free health care services will be provided each week at each site;

(5) The services that will be provided to those persons who are uninsured and underinsured for the public health purpose of improved health, prevention of illness/injury, and disease management.

c. Agreement. The individual volunteer health care provider shall have a signed and current protection agreement with the VHCPP which identifies the covered health care services within the respective scope of practice and conditions of defense and indemnification as provided in rules 641—88.5(135) and 641—88.6(135). The protection agreement shall:

(1) Provide that the individual volunteer health care provider shall perform only those health care services identified and approved by the VHCPP;

(2) Identify the health care services to be provided by the sponsor entity or protected clinic which has been approved by the VHCPP through an application process;

(3) Identify by category the patient groups to be served;

(4) Identify the sites at which the free health care services will be provided;

(5) Identify the maximum amount of time the free health care services will be provided by the individual volunteer health care provider at the identified sites each week;

(6) Provide that the individual volunteer health care provider shall maintain proper records of the health care services;

(7) Provide that the individual volunteer health care provider shall make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department;

(8) Provide that the individual volunteer health care provider shall cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;

(9) Provide that the individual volunteer health care provider shall accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the individual volunteer health care provider for the individual volunteer health care provider's expenses or time needed for the defense of the claim or suit;

(10) Provide that the individual volunteer health care provider shall receive no direct monetary compensation of any kind for services provided in the VHCPP;

(11) Provide that the individual volunteer health care provider shall comply with the protection agreement with the VHCPP concerning approved health care services.

88.3(2) *Protected clinic eligibility.* To be eligible for protection as a state agency under Iowa Code chapter 669 for a claim arising from the provision of covered health care services at a protected clinic, the protected clinic shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

a. The protected clinic shall comply with subrules 88.4(1) through 88.4(5).

b. The protected clinic shall provide a list of all individual volunteer health care providers who provide health care services at the protected clinic.

c. The protected clinic shall submit proof that each individual volunteer health care provider providing health care services at the protected clinic either:

(1) Holds a current protection agreement with the VHCPP, or

(2) Holds current professional liability insurance coverage and an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, 154F, or 155A.

d. The protected clinic shall submit a list of the clinic board of directors and contact information for the board of directors.

e. The protected clinic shall submit proof of IRC Section 501(c)(3) status.

88.3(3) *Sponsor entity or sponsor entity clinic.* As a condition of sponsoring individual volunteer health care providers in the VHCPP, a hospital, clinic, free clinic, health care facility, health care referral program, charitable organization, or field dental clinic shall comply with subrules 88.4(1) through 88.4(5).

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.4(135) Sponsor entity and protected clinic.

88.4(1) Licensure. The sponsor entity or protected clinic shall be licensed to the extent required by law for the facility in question.

88.4(2) If the sponsor entity or protected clinic is a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, the sponsor entity or protected clinic shall provide proof of Section 501(c)(3) status to the VHCPP.

88.4(3) Application. The sponsor entity or protected clinic shall submit the following information on forms provided by the VHCPP:

a. By category, the patient groups to be served;

b. The health care services to be provided;

c. The site where free health care services are to be provided;

d. The days and times when health care services are to be provided at each site;

e. The services that will be provided to those persons who are uninsured and underinsured for the public health purpose of improved health, prevention of illness/injury, and disease management.

88.4(4) Agreement. A signed and current sponsor entity agreement or protected clinic agreement shall exist with the VHCPP which shall:

a. Provide that the individual volunteer health care provider within a sponsor entity or protected clinic shall perform only those health care services identified and approved by the VHCPP;

b. Identify by category the patient groups to be served;

c. Identify the sites at which the free health care services will be provided;

d. Identify the days and times when health care services are to be provided at each site;

e. Provide that the sponsor entity or protected clinic shall maintain proper records of health care services for a period of seven years from the date of service or, in the case of a minor, for a period of one year after the minor has reached the age of majority; and

f. Provide that the sponsor entity agrees that only the individual volunteer health care provider or protected clinic is afforded protection under Iowa Code section 135.24 and that the state assumes no obligation to the sponsor entity, its employees, officers, or agents. The sponsor entity or protected clinic shall submit a statement, which shall be submitted on forms provided by the VHCPP, attesting that the sponsor entity or protected clinic and its staff, employees and volunteers agree to:

(1) Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;

(2) Accept financial responsibility for the sponsor entity's or protected clinic's expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the sponsor entity or protected clinic for expenses or time needed for the defense of the claim or suit;

(3) Receive no direct monetary compensation of any kind for health care services provided in the sponsor entity or protected clinic;

(4) Comply with the sponsor entity agreement or protected clinic agreement with the VHCPP concerning approved health care services.

88.4(5) General liability insurance. The sponsor entity or protected clinic shall submit proof of general liability insurance for the clinic site.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.5(135) Covered health care services. An individual volunteer health care provider holding a current protection agreement with the VHCPP shall be afforded the protection of an employee of the state under Iowa Code chapter 669, and a protected clinic holding a current protection agreement with the VHCPP shall be afforded protection as an agency of the state under Iowa Code chapter 669, only for claims for injury alleged to have been proximately caused by an individual volunteer health care provider's provision of covered health care services or solely on the basis of the individual volunteer health care provider's participation in the sponsor entity or protected clinic.

88.5(1) Covered health care services are only those that are:

a. Identified in the protection agreement with the VHCPP;

b. In compliance with these rules;

c. Provided by or under the direct supervision of the individual volunteer health care provider;

d. Health care services of:

(1) Advanced registered nurse practitioners for: well-child examinations; annual adult examinations; diagnosis and treatment of acute and chronic conditions; health education; health maintenance; immunizations; and minor surgical procedures.

(2) Audiologists for: testing, measurement and evaluation related to hearing and hearing disorders and associated communication disorders for the purpose of nonmedically identifying, preventing,

modifying or remediating such disorders and conditions including the determination and use of appropriate amplification; patient instruction/counseling; patient habilitation/rehabilitation; and referrals.

(3) Bachelor social workers for: psychosocial assessment and intervention through direct contact with clients; referral to other qualified resources for assistance; performance of social histories; problem identification; establishment of goals and monitoring of progress; interviewing techniques; counseling; social work administration; supervision; evaluation; interdisciplinary consultation and collaboration; and research of service delivery, including development and implementation of organizational policies and procedures in program management.

(4) Chiropractors for: examinations; diagnosis and treatment; health education; and health maintenance.

(5) Dental assistants for: intraoral services; extraoral services; infection control; radiography; and removal of plaque or stain by toothbrush, floss, or rubber cup coronal polish.

(6) Dental hygienists for: assessments and screenings; health education; health maintenance; and preventive services (cleaning, X-rays, sealants, fluoride treatments, fluoride varnish).

(7) Dentists for: dental examinations; diagnosis and treatment of acute and chronic conditions; health education; health maintenance; and minor surgical procedures.

(8) Emergency medical care providers for: airway/ventilation/oxygenation; assisted medications - patient's; cardiovascular/circulation; immobilization; IV initiation/maintenance/fluids; and medication administration - routes.

(9) Independent social workers for: psychosocial assessment, diagnosis, and treatment; performance of psychosocial histories; problem identification; evaluation of symptoms and behavior; assessment of psychosocial and behavioral strengths and weaknesses and effects of the environment on behavior; psychosocial therapy; differential treatment planning; and interdisciplinary consultation.

(10) Licensed practical nurses for: supportive or restorative care.

(11) Marital and family therapists for: marital and family therapy; and application of counseling techniques in the assessment and resolution of emotional conditions.

(12) Master social workers for: psychosocial assessment, diagnosis, and treatment; performance of psychosocial histories; problem identification; evaluation of symptoms and behavior; assessment of psychosocial and behavioral strengths and weaknesses and effects of the environment on behavior; psychosocial therapy; differential treatment planning; and interdisciplinary consultation.

(13) Mental health counselors for: mental health counseling; and counseling services involving assessment, referral and consultation.

(14) Occupational therapists for: evaluation and treatment of problems interfering with functional performance in persons impaired by physical illness or injury, emotional disorder, congenital or developmental disability or the aging process.

(15) Pharmacists for: drug dispensing; patient counseling; health screenings and education; and immunizations.

(16) Physical therapists for: interpretation of performance, tests, and measurements; evaluation and treatment of human capabilities and impairments; use of physical agents, therapeutic exercises, and rehabilitative procedures to prevent, correct, minimize, or alleviate a physical impairment; establishment and modification of physical therapy program, treatment planning, and patient instruction/education.

(17) Physicians and physician assistants for: well-child examinations; annual adult examinations; diagnosis and treatment of acute and chronic conditions; health education; health maintenance; immunizations; and minor surgical procedures.

(18) Psychologists for: counseling and the use of psychological remedial measures with persons with adjustment or emotional problems.

(19) Optometrists for: examinations; diagnosis and treatment of the human eye and adnexa; health education; and health maintenance.

(20) Podiatrists for: examinations; diagnosis and treatment; health education; health maintenance; and minor surgical procedures.

(21) Registered nurses for: well-child examinations; annual adult examinations; treatment of acute and chronic conditions; health education; health maintenance; and immunizations.

(22) Respiratory therapists for: diagnostic and therapeutic use of administration of medical gases, aerosols, and humidification, not including general anesthesia; pharmacologic agents relating to respiratory care procedures; bronchopulmonary hygiene; specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of cardiopulmonary abnormalities; and pulmonary function testing.

(23) Speech pathologists for: testing, measurement and evaluation related to the development and disorders of speech, fluency, voice or language for the purpose of nonmedically preventing, ameliorating, modifying or remediating such disorders and conditions; patient instruction/counseling; patient habilitation/rehabilitation; and referrals.

88.5(2) Experimental procedures or procedures and treatments which lack sufficient evidence of clinical effectiveness are excluded from the VHCPP.

88.5(3) Patient referral to a specialty health care provider office shall be made solely by the specialty care referral network.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.6(135) Defense and indemnification. The state shall defend and indemnify an individual volunteer health care provider or a protected clinic for a claim arising from the VHCPP only to the extent provided by Iowa Code chapter 669 and Iowa Code section 135.24. Persons or entities other than the participating individual volunteer health care provider or protected clinic are not considered state employees or state agencies under Iowa Code chapter 669. Defense and indemnification of the individual volunteer health care provider or a protected clinic under Iowa Code chapter 669 and Iowa Code section 135.24 shall occur only if all of the following requirements are met:

88.6(1) The claim involves injury alleged to have been proximately caused by health care services which were identified and approved in the protection agreement with the VHCPP and then only to the extent the health care services were provided by or under the direct supervision of the individual volunteer health care provider, including claims based on negligent delegation of health care, or the individual volunteer health care provider is named as a defendant solely because of the individual volunteer health care provider's participation in the protected clinic or sponsor entity clinic.

88.6(2) The claim arises from covered health care services that were performed at a site identified and approved in the protection agreement with the VHCPP.

88.6(3) The claim arises from covered health care services provided through a protected clinic or sponsor entity clinic identified and approved in the individual volunteer health care provider's protection agreement with the VHCPP and which meets the requirements of rule 641—88.3(135).

88.6(4) The individual volunteer health care provider, protected clinic, or sponsor entity clinic that provided the health care services receives no direct monetary compensation of any kind and no promise to pay compensation for the health care services which allegedly resulted in injury.

88.6(5) The health care services are provided to a patient who is a member of a patient group identified in the protection agreement with the VHCPP.

88.6(6) The individual volunteer health care provider, protected clinic, or sponsor entity clinic is eligible and registered as provided in rule 641—88.3(135) or the care is provided by an individual volunteer health care provider who holds current professional liability insurance coverage and an active unrestricted license to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, 154F, or 155A and has been approved by the VHCPP.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.7(135) Term of agreement.

88.7(1) *Individual volunteer health care provider.* The protection agreement with the VHCPP shall expire two years from the date of execution. Individual volunteer health care providers may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement.

88.7(2) *Protected clinic.* The protection agreement with the VHCPP shall expire two years from the date of execution. The protected clinic may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement.

88.7(3) *Sponsor entity.* The sponsor entity agreement with the VHCPP shall expire two years from the date of execution. Sponsor entities may apply for renewal by filing an application at least 30 days prior to expiration of the sponsor entity agreement.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.8(135) Reporting requirements and duties.

88.8(1) Upon obtaining knowledge or becoming aware of any injury allegedly arising out of the negligent rendering of, or the negligent failure to render, covered health care services under the VHCPP, a participating individual volunteer health care provider, protected clinic, or sponsor entity shall provide to the VHCPP, as soon as practicable, written notice containing, to the extent obtainable, the circumstance of the alleged injury, the names and addresses of the injured, and any other relevant information.

88.8(2) Upon obtaining knowledge or becoming aware of an injury as defined in subrule 88.8(1), the participating protected clinic or sponsor entity shall promptly take all reasonable steps to prevent further or other injury from arising out of the same or similar incidents, situations or conditions.

88.8(3) A participating individual volunteer health care provider, protected clinic, or sponsor entity shall immediately notify the Iowa Department of Justice, Special Litigation Division, Hoover State Office Building, Des Moines, Iowa 50319, of service or receipt of an original notice, petition, suit or claim seeking damages from the individual volunteer health care provider, protected clinic or sponsor entity related to participation in the VHCPP.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.9(135) Revocation of agreement. The VHCPP may deny, suspend, revoke, or condition the protection of an individual volunteer health care provider, protected clinic or sponsor entity for cause, including but not limited to:

1. Failure to comply with the protection agreement or sponsor entity agreement with the VHCPP.
2. Violation of state law governing the respective scope of practice or other law governing the health care services provided under the VHCPP.
3. Making false, misleading, or fraudulent statements in connection with the VHCPP, including determination of eligibility of the individual volunteer health care provider, protected clinic, or sponsor entity or handling of a claim against the individual volunteer health care provider, protected clinic, sponsor entity or the state.
4. Evidence of substance abuse or intoxication affecting the provision of health care services under the VHCPP.
5. Reasonable grounds to believe that the individual volunteer health care provider may have provided incompetent or inadequate care to a patient under the VHCPP or is likely to do so.
6. Reasonable grounds to believe that the individual volunteer health care provider's, protected clinic's, or sponsor entity's participation in the VHCPP may expose the state to undue risk.
7. Failure to immediately notify the VHCPP of any disciplinary action brought against the individual volunteer health care provider by the applicable state licensing board.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.10(135) Procedure for revocation of agreement. A proceeding for revocation of an individual volunteer health care provider's protection agreement or a protected clinic's protection agreement or a sponsor entity's agreement for participation shall be conducted as a contested case proceeding pursuant to Iowa Code chapter 17A and 641—Chapter 173. Iowa Code section 17A.18 does not preclude emergency summary suspension of a protection agreement or a sponsor entity agreement. The VHCPP shall immediately notify the appropriate licensing board and the appropriate protected clinic or sponsor entity of revocation of an individual volunteer health care provider's protection agreement.

[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.11(135) Effect of suspension or revocation. If the VHCPP suspends or revokes an individual volunteer health care provider's protection agreement, sponsor entity agreement, or protected clinic's protection agreement, the action shall suspend or revoke future protection but shall not negate defense and indemnification coverage for covered acts or omissions which occurred during the effective dates of the protection agreement.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.12(135) Protection denied.

88.12(1) *Protection denied—appeal procedure.* An applicant who has been denied protection by the VHCPP may appeal the denial and request a hearing on the issues related to the denial by serving a notice of the appeal and request for hearing to the Director, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, in writing, not more than 30 days following the date of the mailing of the notification of protection denial to the applicant or not more than 30 days following the date upon which the applicant was served notice if notification was made in the manner of service of an original notice. The request for hearing shall specifically delineate the facts to be contested and determined at the hearing.

88.12(2) *Protection denied—hearing.* If an applicant who has been denied protection by the VHCPP appeals the protection denial and requests a hearing pursuant to subrule 88.12(1), the hearing and subsequent procedures shall be conducted pursuant to Iowa Code chapter 17A and 641—Chapter 173.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.13(135) Board notice of disciplinary action. The applicable state licensing board shall notify the VHCPP of the initiation of a contested case against a protected individual volunteer health care provider or the imposition of disciplinary action, including providing copies of any contested case decision or settlement agreement with the protected individual volunteer health care provider upon request of the VHCPP.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.14(135) Effect of eligibility protection. A fully executed protection agreement of an individual volunteer health care provider or protected clinic as eligible for participation in the VHCPP by the applicable state licensing board and the department is solely a determination that the state will defend and indemnify the individual volunteer health care provider or the protected clinic to the extent provided by Iowa Code section 135.24 and these rules. The protection is not an approval or indication of ability or competence and may not be represented as such. The protected clinic or sponsor entity through which the individual volunteer health care provider provides free health care services shall retain responsibility for determining that health care personnel are competent and capable of adequately performing the health care services to be provided.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

641—88.15(135) Reporting by a protected clinic or sponsor entity. A reporting form will be provided by the VHCPP to the participating protected clinic or sponsor entity at the time the protected clinic or sponsor entity agreement is approved by the VHCPP. Within 60 days following each calendar quarter, the protected clinic or sponsor entity shall provide a report to the VHCPP. At a minimum, the report shall include the number of clinic patients receiving free health care services and patient demographics by age, ethnicity, and insurance status.
[**ARC 8791B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code section 135.24.

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CHAPTER 155
LICENSURE STANDARDS FOR SUBSTANCE ABUSE AND PROBLEM GAMBLING TREATMENT PROGRAMS

[Prior to 7/27/88, see Substance Abuse, Iowa Department of[805] Ch 3]
[Prior to 3/29/06, see 643—Ch 3]

641—155.1(125,135) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

"Accreditation body" means a national or not-for-profit body or organization recognized by the board as meeting the criteria of the board for deemed status.

"Acute intoxication or withdrawal potential" is a category to be considered in the ASAM-PPC-2R criteria. This category evaluates client/patient's current status of intoxication and potential for withdrawal complications. Historical information about client/patient's withdrawal patterns may also be considered.

"Administration" means the direct application of a prescription drug, whether by injection, inhalation, ingestion, or any other means, to the body of a client/patient or research subject by one of the following:

1. A practitioner or the practitioner's authorized agent.
2. The client/patient or research subject at the direction of a practitioner.

"Admission" means the point in an individual's relationship with the program at which the screening process has been completed and the individual is entitled to receive treatment services.

"Admission criteria" means specific ASAM-PPC-2R criteria to be considered in determining appropriate client/patient placement and resultant referral to a level of care (substance abuse treatment only). Criteria vary in intensity and are organized into categories to be used by treatment programs for assessment, to determine appropriate level of care, and for treatment planning.

"Affiliation agreement" means a written agreement between the governing authority of the program and another organization under the terms of which specified services, space or personnel are provided to one organization by the other, but without exchange of moneys.

"Applicant" means any treatment program which has applied for a license or renewal thereof.

"Application" means the process through which a treatment program applies for a license or renewal as outlined in the application procedures.

"ASAM-PPC-2R" means the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised.

"Assessment" means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the level of care needed by the client/patient.

"Biomedical conditions and complications" means one category to be considered in the ASAM-PPC-2R criteria. This category evaluates client/patient's current physical condition. Historical information on client/patient's medical/physical functioning may also be considered. This category includes biological and physical aspects of the medical assessment and treatment of a client/patient. Physical problems may be the direct result of a substance use disorder, or be independent of and interactive with such a disorder, thus affecting the total treatment plan and prognosis.

"Board" means the state board of health created pursuant to Iowa Code chapter 136.

"Case management" means the process of using predefined criteria to evaluate the necessity and appropriateness of client/patient care.

"Chemical dependency" means alcohol or drug dependence or psychoactive substance use disorder as defined by the current Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV), criteria or by other standardized and widely accepted criteria.

"Chemical dependency rehabilitation services" means those individual or group services that are directly related to chemical dependency or the individual treatment plan. These services include individual, group and family counseling, educational services, self-help groups and structured recreational activities. They do not include active employment or education courses beyond the secondary level.

"Chemical substance" means alcohol, wine, spirits and beer as defined in Iowa Code chapter 123 and controlled substances as defined in Iowa Code section 124.101.

"Client/patient" means an individual who is a substance abuser or a problem gambler or is chemically dependent, has been assessed as appropriate for services, and for whom screening procedures have been completed.

"Clinical oversight" means oversight provided by an individual who, by virtue of education, training and experience, is capable of assessing the psychosocial history of a client/patient to determine the most appropriate treatment plan. The person providing oversight shall be designated by the treatment program.

"Clinically managed high-intensity residential services (Level III.5)" means high-intensity residential services designed to address significant problems with living skills. The prime example of Level III.5 care is the therapeutic community, which provides a highly structured recovery environment in combination with moderate- to high-intensity professional clinical services to support and promote recovery. Client/patients must participate in at least 50 hours of structured chemical dependency rehabilitation services per week.

"Clinically managed low-intensity residential services (halfway house) (Level III.1)" means low-intensity professional addiction treatment services offered at least five hours per week. Treatment is directed toward applying recovery skills, preventing relapse, promoting personal responsibility and reintegrating the resident into the worlds of work, education and family life. The services may include individual, group and family therapy. Mutual/self-help meetings are available on site.

"Clinically managed medium-intensity residential services (Level III.3)" are frequently referred to as extended or long-term care. Level III.3 programs provide a structured recovery environment in combination with medium-intensity professional clinical services to support and promote recovery. Client/patients must participate in at least 30 hours of structured chemical dependency rehabilitation services per week.

"Clinically managed services" means clinically managed services in which treatment is directed by addiction specialists rather than by medical professionals. They serve residents whose problems in the area of emotional/behavioral concerns, treatment acceptance, relapse potential, or recovery environment are the primary focus of treatment and problems in the areas of intoxication/withdrawal (Dimension 1) and biomedical concerns (Dimension 2), if any, are minimal.

"Concerned family member" or *"concerned person"* means an individual who is seeking treatment services due to problems arising from the person's involvement or association with a substance abuser, chemically dependent individual, problem gambler or client/patient and who is negatively affected by the behavior of the substance abuser, chemically dependent individual, problem gambler or client/patient.

"Continuing care" means a Level I service of the ASAM-PPC-2R criteria, which provides a specific period of structured therapeutic involvement designed to enhance, facilitate and promote transition from primary care to ongoing recovery. There shall not be any required frequency of review for continuing care or frequency of review of treatment plan by client/patient and counselor.

"Continuing service and discharge criteria" means, in accordance with ASAM-PPC-2R, during the process of client/patient assessment, certain problems and priorities are identified as justifying admission to a particular level of care and the resolution of those problems and priorities determines when a client/patient can be treated at a different level of care or discharged from treatment. New problems may require services that can be provided effectively at the same level of care or may require a more intensive or less intensive level of care.

"Continuum of care" means a structure of interlinked treatment modalities and services designed so that a client/patient's changing needs will be met as the client/patient moves through the treatment and recovery process.

"Contract" means a formal legal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program as well as the moneys to be expended in the exchange.

"Counselor" means an individual who, by virtue of education, training or experience, provides treatment, which includes advice, opinion, or instruction to an individual or in a group setting to allow

an opportunity for a person to explore the person's problems related directly or indirectly to substance abuse, chemical dependence or problem gambling.

"Culturally and environmentally specific" means integrating into the assessment and treatment process the ideas, customs, beliefs, and skills of a given population, as well as an acceptance, awareness, and celebration of diversity regarding conditions, circumstances and influences surrounding and affecting the development of an individual or group.

"Deemed status" means that the board and division will accept a board-approved, outside accreditation body's review, assessment and accreditation of a program, component or service of a program/organization's operations and services. Programs which received deemed status approval are exempt from routine licensure requirements; however, such programs are subject to all other provisions of this chapter.

"Department" means the Iowa department of public health.

"Designee" means the staff person or counselor who is delegated tasks, duties and responsibilities normally performed by the treatment supervisor, treatment director or executive director.

"Detoxification" means the process of withdrawing a person from a specific psychoactive substance in a safe and effective manner. ASAM-PPC-2R detoxification levels of care include Levels I-D, II-D, III.2-D, III.7-D, and IV-D.

"Director" means the director of the Iowa department of public health.

"Discharge planning" means the process, begun at admission, of determining a client/patient's continued need for treatment services and of developing a plan to address ongoing client/patient posttreatment needs. Discharge planning may or may not include a document identified as a discharge plan.

"Division" means the division of behavioral health.

"Emergency admission" means an admission due to an emergency situation with placement screening criteria being applied as soon after admission as possible.

"Emotional, behavioral or cognitive conditions and complications" is a category to be considered in the ASAM-PPC-2R criteria. This category evaluates client/patient's current emotional, behavioral, and cognitive status. Emotional, behavioral or cognitive status may include, but is not limited to, psychiatric conditions, psychological or emotional/behavioral complications, poor impulse control, changes in mental status, or transient neuropsychiatric complications and the behavior that accompanies or follows these emotional states. Historical information on client/patient's emotional/behavioral functioning may also be considered.

"Evaluation" means the process to evaluate the client/patient's strengths, weaknesses, problems, and needs for the purpose of defining a course of treatment. This includes use of the standardized placement screening and any additional client/patient profile information and development of a comprehensive treatment plan.

"Extended outpatient treatment" means a Level I service of the ASAM-PPC-2R criteria, which is an organized, nonresidential service. Extended outpatient treatment services usually are provided in regularly scheduled sessions which include less than nine treatment hours a week for adults or less than six treatment hours a week for adolescents. For problem gambling client/patients, extended outpatient treatment services may be offered in conjunction with transitional housing.

"Facility" means a hospital, detoxification center, institution or program licensed under Iowa Code section 125.13 or 2009 Iowa Code Supplement section 135.150 providing care, maintenance and treatment for client/patients. Facility also includes the physical areas such as grounds, buildings, or portions thereof under direct administrative control of the program.

"Focused reviews" means a survey conducted during the licensing process to assess the degree to which a program has improved its level of compliance relating to specific recommendations. The subject matter of the review is typically in area(s) of identified deficiency in compliance; however, other performance areas may also be assessed by a surveyor(s), including areas not covered in deemed status.

"Follow-up" means the process for determining the status of an individual who has been referred to an outside resource for services or who has been discharged from services.

"Governing body" means the individual(s), group, or agency that has ultimate authority and responsibility for the overall operation of the facility.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Intake" means gathering additional assessment information at the time of admission to services.

"Intensive outpatient treatment (Level II.1)" means intensive outpatient programs (IOP) that provide a minimum of nine hours for adults or a minimum of six hours for adolescents of structured programming per week, consisting primarily of counseling and education. For problem gambling client/patients, the service may be offered in conjunction with transitional housing.

"Iowa board of certification" means the professional certification board that certifies substance abuse counselors and prevention specialists, problem gambling treatment specialists and other addiction treatment specialists in the state of Iowa.

"Levels of care" is a general term that encompasses the different options for treatment that vary according to the intensity of the services offered. Each treatment option in the ASAM-PPC-2R is a level of care.

"Licensee" means any program licensed by the department.

"Licensure" means the issuance of a license by the department and the board which validates the licensee's compliance with treatment program standards and authorizes the licensee to operate a treatment program in the state of Iowa.

"Licensure weighting report" means the report that is used to determine the type of license a program qualifies for based on point values assigned to areas reviewed and total number of points attained. In addition, a minimum percent value in each of three categories shall be attained to qualify a program for a license as follows: 95 percent or better rating in clinical, administrative and programming for a three-year license; 90 percent or better rating in clinical, administrative and programming for a two-year license; or less than 90 percent but no less than 70 percent rating in clinical, administrative and programming for a one-year license. The determination of length of license for programs licensed through deemed status shall be made by the accreditation body.

"Maintenance" means the prolonged scheduled administration of methadone or other approved controlled substances intended as a substitute or antagonist to abused substances in accordance with federal and state regulations.

"Management of care" means the process to ensure the appropriate level of care is utilized by implementing ASAM-PPC-2R criteria during placement screening, continuing service and discharge. This process includes discharge planning that begins at admission to meet the immediate, ongoing and posttreatment needs of the client/patient.

"May" means a term used in the interpretation of a standard to reflect an acceptable method that is recognized but not necessarily preferred.

"Medically managed intensive inpatient treatment (Level IV)" is an organized ASAM-PPC-2R service staffed by designated addiction physicians or addiction credentialed clinicians. Level IV care involves a planned regimen of 24-hour medically directed evaluation, care and treatment of substance-related disorders in an acute-care inpatient setting. Such a service functions under a defined set of policies and procedures and has permanent facilities that include inpatient beds. Services involve daily medical care in which diagnostic and treatment services are directly provided by a licensed physician.

"Medically monitored intensive inpatient treatment (Level III.7)" is an organized ASAM-PPC-2R service delivered by an interdisciplinary staff to client/patients whose subacute biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care. Twenty-four-hour observation, monitoring and treatment are available. However, the full resources of an acute care general hospital or a medically managed inpatient treatment service system are not necessary. Services are provided by an interdisciplinary staff of nurses, counselors, social workers, addiction specialists and other health care professionals and technical personnel, under the direction of licensed physicians. Medical monitoring is provided through an appropriate mix of direct patient contact, review of records, team meetings, 24-hour coverage by a physician, and quality assurance programs.

"Outreach" means public speaking engagements and other similar activities and functions that inform the public of available programs and services offered by a treatment program. In addition, outreach is a process or series of activities that identifies individuals in need of services, engages them and links them with the most appropriate resource or service provider. Such activities may include, but are not limited to, the following: individual client/patient recruitment through street outreach and organized informational sessions at churches, community centers, recreational facilities, and community service agencies.

"OWI" means operating while intoxicated, in violation of Iowa Code chapter 321J.

"Partial hospitalization (day treatment) (Level II.5)" means a program which provides 20 or more hours of clinically intensive programming per week based on individual treatment plans. Programs have ready access to psychiatric, medical and laboratory services and thus are better able than Level II.1 programs to meet client/patient needs. Partial hospitalization/day treatment is a generic term encompassing day, night, evening and weekend treatment programs that employ an integrated, comprehensive and complementary schedule of recognized treatments.

"Physician" means any individual licensed under Iowa Code chapter 148, 150, or 150A.

"Prevention" means a proactive process to eliminate unnecessary disease, disability, and premature death caused by (1) acute disease, (2) chronic disease, (3) intentional or unintentional injury or disease associated with environmental, home and workplace hazards, and (4) controllable risk factors such as poor nutrition; lack of exercise; alcohol, tobacco, and other drug use; inadequate use of preventive health services; and other risk behaviors.

"Primary care modality" means a treatment component or modality including continuing care, halfway house, extended outpatient treatment, intensive outpatient treatment, primary extended residential treatment, medically monitored intensive inpatient treatment, and medically managed intensive inpatient treatment services.

"Primary scope of practice" means the area in which a counselor maintains a professional license or certification.

"Prime programming time" means any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning until departure for school, during meals, after school, transition between activities, evenings and bedtime, or weekends and holidays, in order to maintain continuity of program and care. Prime programming time shall be defined by the facility.

"Problem gambling" means a pattern of gambling behavior which may compromise, disrupt or damage family, personal or vocational pursuits.

"Program" means any partnership, corporation, association, governmental subdivision or public or private organization.

"Protected classes" means classes of people who have required special legislation to ensure equality.

"Quality improvement" means the process of objectively and systematically monitoring and evaluating the quality and appropriateness of client/patient care to improve client/patient care and resolve identified problems.

"Readiness to change" is a category to be considered in the ASAM-PPC-2R criteria. This category evaluates the client/patient's current emotional and cognitive awareness of the need to change and level of commitment to change.

"Recovery/living environment" is a category to be considered in the ASAM-PPC-2R criteria. This category evaluates client/patient's current recovery/living environment as it impacts on level of care decision making and treatment planning. Recovery/living environment may include, but is not limited to, current relationships and degree of support for recovery, current housing, employment situation, and availability of alternatives. Historical information on client/patient's recovery/living environment may also be considered.

"Recovery oriented system of care" means person-centered and self-directed approaches to care that build on the strengths and resilience of individuals, families and communities to take responsibility for their sustained health, wellness, and recovery from mental illness, alcohol and drug problems, and problem gambling. A recovery oriented system of care offers a comprehensive menu of services and

supports that can be combined and readily adjusted to meet the individual's needs and chosen pathway to recovery.

"Rehabilitation" means the restoration of a client/patient to the fullest physical, mental, social, vocational, and economic usefulness of which the client/patient is capable. Rehabilitation may include, but is not limited to, medical treatment, psychological therapy, occupational training, job counseling, social and domestic rehabilitation and education.

"Relapse" means progressive irresponsible, inappropriate and dysfunctional behavior patterns that could lead to resumption of alcohol or drug use or problem gambling. "Relapse" also refers to the resumption of alcohol or drug use or problem gambling.

"Relapse, continued-use or continued-problem potential" is a category to be considered in the ASAM-PPC-2R criteria. This category evaluates client/patient's current factors that contribute to relapse potential as it impacts on level of care decision making and treatment planning. Relapse potential may include, but is not limited to, current statements by client/patient about relapse potential, reports from others on potential for client/patient's relapse, and assessment by clinical staff. Historical information on client/patient's relapse potential may also be considered. This category may include the client/patient's understanding of skills in coping with addictive or mental disorders, recognition of relapse triggers, skills to control impulses and ways to cope with relapse potential.

"Residential program" means a 24-hour, live-in, seven-day-a-week treatment program facility offering intensive rehabilitation services to individuals who are considered unable to live or work in the community due to social, emotional, or physical disabilities resulting from substance abuse or problem gambling. The ASAM-PPC-2R levels of care may include III.1, III.3, III.5 or III.7.

"Rule" means each statement of general applicability that implements, interprets, or prescribes division law or policy, or that describes the organization procedure or practice requirements of the division. The term includes the amendment or repeal of existing rules as specified in the Iowa Code.

"Screening" means the process by which a client/patient is determined appropriate and eligible for admission to a particular program or level of care. The focus is on the minimum criteria necessary for appropriateness/eligibility.

"Self-administration of medication" means the process where a properly trained staff member observes a client/patient inject, inhale, ingest, or by any other means take, medication which has been prescribed by a licensed physician.

"Shall" means the term used to indicate a mandatory statement, the only acceptable method under the present standards.

"Should" means the term used in the interpretation of a standard to reflect the commonly accepted method, yet allowing for the use of effective alternatives.

"Sole practitioner" means an individual incorporated under the laws of the state of Iowa, or an individual in private practice who is providing substance abuse treatment services independent from a program that is required to be licensed in accordance with Iowa Code section 125.13(1).

"Specialized certification" means a substance abuse- or problem gambling-related credential acceptable to the department for providing treatment according to these rules.

"Staff" means any individual who provides services to the treatment program on a regular basis as a paid employee, agent or consultant or as a volunteer.

"Standards" means specifications representing the minimal characteristics of a treatment program which are acceptable for the issuance of a license.

"Subspecialty" means a secondary scope of practice, either substance abuse treatment or problem gambling treatment, approved in accordance with these rules. To maintain expertise within the subspecialty, the counselor shall complete a minimum of an additional 20 hours of training within the subspecialty every two years.

"Substance abuser" means a person who habitually lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

"Time frames" means the period of time within which the assessment and treatment plan must be completed after admission, frequency of review of the treatment plan by the client/patient and counselor,

and frequency of reviews for continuing service and discharge. The time frames for Levels I and III.1 shall be every 30 days; for Levels II.1, II.5, III.3 and III.5, every 7 days; and for Levels III.7 and IV, daily. For Level I continuing care/aftercare, there shall not be any required frequency of review for continuing service or frequency of review of treatment plan by client/patient and counselor.

"Transitional housing" means housing that may be offered to individuals who are problem gamblers and who have no other housing alternatives or whose housing alternatives are not conducive to problem gambling recovery. Problem gamblers receiving transitional housing must also be receiving problem gambling treatment services.

"Treatment" means the broad range of planned and continuing inpatient, outpatient, and residential care services, including diagnostic evaluation, counseling, and medical, psychiatric, psychological, and social service care, which may be extended to substance abusers, problem gamblers, concerned persons, concerned family members, or significant others. Treatment is geared toward influencing the behavior of such individuals to achieve a state of rehabilitation.

"Treatment days" means days in which the treatment program is open for services or actual working days.

"Treatment planning" means the process by which a counselor and client/patient identify and rank problems, establish agreed-upon goals, and decide on the treatment process and resources to be utilized.

"Treatment program" means a program licensed under these rules. A treatment program may be a substance abuse treatment program, a problem gambling treatment program, or a substance abuse and problem gambling treatment program.

"Treatment supervisor" means an individual who, by virtue of education, training or experience, is capable of assessing the psychosocial history of a client/patient to determine the treatment plan most appropriate for the client/patient. This person shall be designated by the treatment program.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.2(125,135) Licensing. A single license will be issued to each qualifying treatment program. A program shall apply for a license to provide substance abuse treatment, problem gambling treatment, or combined substance abuse and problem gambling treatment. The license will delineate one or more categories of services the program is authorized to provide. Although a program may have more than one facility, only one license will be issued to the program. The categories of services for which licenses will be issued are:

1. Narcotic detoxification/chemical substitute, antagonist maintenance chemotherapy;
2. Assessment and evaluation;
3. OWI correctional residential;
4. OWI correctional outpatient;
5. Correctional residential treatment;
6. Correctional outpatient treatment;
7. Medically managed intensive inpatient services: Level IV;
8. Residential/inpatient services: Levels III.1, III.3, III.5 and III.7;
9. Intensive outpatient/partial hospitalization services: Levels II.1 and II.5; and
10. Outpatient extended and continuing care services: Level I.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.3(125,135) Type of licenses.

155.3(1) *Issuance of licenses.*

a. Licenses may be issued for up to three years. A license may be renewed for one, two, or three years. An initial license may be issued for 270 days. A license issued for 270 days shall not be renewed or extended.

b. Licenses shall expire one or two calendar years from the date of issue, and a renewal of the license shall be issued only on application.

c. The renewal of a one-year or two-year license shall be contingent upon demonstration of continued compliance with licensure standards and in accordance with the licensure weighting report criteria.

d. The renewal of a three-year license shall be contingent upon demonstration of substantial continued compliance with licensure standards and in accordance with the licensure weighting report criteria or continuation in deemed status.

e. Failure to apply for renewal of the license within 30 days after the expiration date shall result in immediate termination of license and require reapplication.

155.3(2) *Corrective action.* Following the issuance of a license, the treatment program may be requested by the board to provide a written plan of corrective action and to bring into compliance all areas found in noncompliance during the on-site visit. The corrective action plan shall be placed in the program's permanent file with the division and used as reference during future on-site inspections.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.4(125,135) Nonassignability; program closure.

155.4(1) A license issued by the department for the operation of a treatment program applies both to the applicant program and the premises upon which the program is to be operated. Licenses are not transferable.

155.4(2) A discontinued program is one which has terminated the services for which it has been licensed. When a program is discontinued, its current license is void immediately and shall be returned to the department.

155.4(3) Any person or other legal entity acquiring a licensed facility for the purpose of operating a treatment program shall apply for a new license.

155.4(4) Any person or legal entity having acquired a license and desiring to fundamentally alter the treatment philosophy or transfer to a different premises must notify the board 30 days prior to said action in order for the department to review the site change and to determine appropriate action.

155.4(5) A licensee shall, if possible, notify the department of impending closure of the licensed program at least 30 days prior to such closure. The licensee shall be responsible for the removal and placement of client/patients and for the preservation of all records. Upon closing all facilities and terminating all service delivery activities, the licensee shall immediately return the license to the department.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.5(125,135) Application procedures. The department shall provide an application to all applicants for licensure. An on-site visit for licensure of an initial applicant shall occur before the program opens and admits client/patients for services. For initial applicants, if technical assistance has been provided, the on-site visit may be waived at the discretion of the department. The division shall prepare a report with a recommendation for licensure to be presented at a board meeting within 60 days from the site visit. Public notice for board meetings will be made in accordance with Iowa Code section 21.4. The division shall provide notice to the program ten days prior to the board meeting notifying the program director and board chairperson of the time, place, and date the board will review and act upon the application for the program along with the results of the inspection. The division shall provide to all board members reports of the on-site program licensure inspection and a final recommendation for each application to be acted upon at the next board meeting.

155.5(1) *Application information for comprehensive programs.* An applicant for licensure shall submit the following information on forms available at the Iowa Department of Public Health, Division of Behavioral Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

a. The name and address of the applicant treatment program.

b. The name and address of the executive director of such treatment program.

c. The names, titles, dates of employment, education, and years of current job-related experience of staff and a copy of the table of organization. Where multiple components and facilities exist, the relationship between components and facilities must be shown, as well as a description of the screening and training process for volunteer workers.

d. The names and addresses of members of the governing body, sponsors, or advisory boards of such treatment program and current articles of incorporation and bylaws.

e. The names and addresses of all physicians, other professionally trained personnel, medical facilities, and other individuals or organizations with whom the treatment program has a direct contractual or affiliation agreement.

f. A description of the treatment services provided by the treatment program and a description of weekly activities for each treatment modality or component.

g. Copies of reports substantiating compliance with federal, state and local rules and laws for each facility, to include appropriate Iowa department of inspections and appeals rules, state fire marshal's rules and fire ordinances, appropriate local health, fire, occupancy code, and safety regulations.

h. Information required under Iowa Code section 125.14A.

i. Fiscal management information to include a recent audit or opinion of auditor and board minutes to reflect approval of budget and insurance program.

j. Insurance coverage related to professional and general liability; building; workers' compensation; and fidelity bond.

k. The address and facility code of each office, facility, or program location.

l. The program's current written policies and procedures manual to include the staff development and training program, and personnel policies. Applications for licensure will not be considered complete until a complete policies and procedures manual has been submitted to the division.

m. The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

155.5(2) *Application information for substance abuse assessment and evaluation programs.* An applicant for licensure shall submit the following information on forms available at the Iowa Department of Public Health, Division of Behavioral Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075.

a. The name and address of the applicant substance abuse assessment and evaluation program.

b. The name and address of the executive director or sole practitioner of such substance abuse program.

c. The names, titles, dates of employment, education, and years of current job-related experience of staff and a copy of the table of organization (if applicable). If multiple components and facilities exist, the relationship between components and facilities must be shown, as well as a description of services.

d. The names and addresses of members of the governing body, sponsors, or advisory boards of such substance abuse assessment and evaluation program and current articles of incorporation and bylaws. (This requirement does not apply to a sole practitioner.)

e. The name(s) and address(es) of person(s) entered into the affiliation agreement for clinical oversight.

f. A description of the assessment and evaluation services.

g. Copies of reports substantiating compliance with federal, state and local rules and laws for each facility, to include appropriate state fire marshal's rules and fire ordinances, occupancy code, and safety regulations.

h. Information required under Iowa Code section 125.14A.

i. Insurance coverage related to professional and general liability; building; workers' compensation; and fidelity bond.

j. The address and facility code of each office, facility, or program location.

k. The program's current written policies and procedures manual which shall include the staff development and training program, and personnel policies. Applications for licensure will not be considered complete until a complete policies and procedures manual has been submitted to the division.

The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

155.5(3) *Renewal.* An application for renewal shall be submitted on forms provided by the department at least 60 calendar days before expiration of the current license. An application for licensure renewal will not be considered complete until a current policies and procedures manual has been submitted to the department by the applicant treatment program.

155.5(4) *Application update or revision.* The department shall be notified, and a request of an application for licensure for update or revision shall be made, by an existing licensed program 30 days prior to any change(s) of address of offices, facilities, or program locations; or additions or deletions of the type(s) of services or programs provided and licensed. A new licensure application form shall be completed to reflect change of address of offices, facilities, or program locations, or additions or deletions of the type(s) of services or program(s) provided or licensed and shall be returned to the division within 10 working days from the date the forms are received. When applicable, as determined by the department, an on-site licensure inspection of a new component, service, program or facility may be conducted by the department within six months, upon receipt of the updated or revised application or during an existing licensed program's scheduled relicensure on-site inspection, whichever occurs first.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.6(125,135) Application review. An applicant for licensure shall submit a completed application to the department within 30 days from the date the forms are received. The department shall review the application for completion and request any additional material as needed.

Applicants failing to return the forms shall be notified by registered mail that all programs must be licensed.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.7(125,135) Inspection of licensees. The department shall inspect the facilities and review the policies and procedures utilized by each program. The examination and review may include case record audits and interviews with staff and clients, consistent with the confidentiality safeguards of state and federal laws.

155.7(1) *Technical assistance.* A program applying for an initial license to operate a treatment program in the state of Iowa will be visited by the department for the purpose of providing needed technical assistance regarding the licensure criteria and procedures. The program may waive technical assistance in order to expedite the licensing process. Requests shall be submitted in writing to the division.

a. Following the issuance of a license, the treatment program may request technical assistance from the department so as to bring into conformity areas reported to be in noncompliance to these rules. Such technical assistance shall be scheduled within 30 days of the applicant's request depending on the availability of staff. The department may also request that technical assistance be provided to the program if deficiencies are noted during a site visit.

b. Reserved.

155.7(2) *On-site visit for licensure.* A licensure on-site inspection shall be scheduled after the department's receipt of the program's application to operate a treatment program. The department shall not be required to provide advance notice to the program of the on-site visit for licensure.

a. The on-site visit team will consist of designated members of the division staff, as approved by the director.

b. The team will inspect the program in order to verify information contained in the application and ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of their findings to the applicant within 20 working days after the completion of the inspection.

155.7(3) *Effective date of license.* The effective date of a license shall begin on the date the board reviews the program's written report/application and acts to issue a license.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.8(125,135) Licenses—renewal. Upon approval of an application for licensing by the board, a license shall be issued by the department. Licenses shall be renewed pursuant to rule 641—155.5(125,135).

155.8(1) *Board meeting preparation.* The division shall prepare a report with a final recommendation for licensing to be presented at a board meeting within 80 days from the site visit. Public notice of board meetings shall be made in accordance with Iowa Code section 21.4.

a. The division shall send notice to the program by certified mail, return receipt requested, ten days prior to the board meeting notifying the program director and board chairperson of the time, place, and date the board will review and act upon the application for the program along with the results of the inspection.

b. The division shall mail to all board members the following information on each application to be processed at the next board meeting:

(1) Reports of the on-site program licensure inspections; and

(2) A final recommendation for licensing.

155.8(2) *Board meeting format.*

a. The chairperson or designee shall call the meeting to order at the designated time.

b. The presiding officer will read each application and protocols.

c. Opportunity shall be given all concerned parties to respond, present evidence, and arguments on each application.

d. After all concerned parties are heard, the board will make a decision as to whether the applicant should be finally approved or initially denied a license to operate a substance abuse treatment program.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.9(125,135) Corrective action plan. Programs approved for a license for 270 days by the board shall submit a corrective action plan to the director no later than 30 days following the board meeting. The corrective action plan shall include, but not be limited to:

1. Specific problem areas.
2. A delineation of corrective measures to be taken by the program.
3. A delineation of target dates for completion of corrective measures for each problem area.
4. A follow-up on-site visit will be required to review the implemented corrective action with a subsequent report to the board.

Programs issued a license for a period of one or two years shall submit a corrective action plan for those standards found to be in noncompliance following a licensure inspection. Technical assistance on a corrective action plan shall not be required for one- or two-year licenses. The corrective action plan shall be submitted within 30 days of receipt of the licensure inspection report.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.10(125,135) Grounds for denial of initial license.

155.10(1) *Denial of application for licensure.* All programs applying for an initial license shall submit complete application information and shall be inspected by the department prior to the program's opening and offering services. A recommendation by the department of a denial of an initial application for licensure to the board may be made based on the following reasons:

a. The application for licensure is incomplete or does not have the information required by 641—155.5(125).

b. On-site inspection report results based on the licensure weighting report indicate a score below minimum required for a recommendation of a 270-day license. A program applying for a 270-day license shall have a minimum score of 70 percent in each of the following standards: clinical, administrative and programming.

c. Violation of any of the grounds for discipline pursuant to 641—155.11(125,135).

155.10(2) *On-site visit for licensure.* The on-site visit for licensure of an initial applicant shall occur prior to the program opening and admitting client/patients. The department shall not be required to provide advance notice to the program of the on-site visit for licensure.

a. The on-site visit team will consist of designated members of the division staff, as approved by the director.

b. The team will inspect the program that has applied for a license in order to verify information contained in the application, ensure compliance with all laws, rules and regulations.

c. The inspection team shall send a written report, return receipt requested, of their findings to the applicant within 20 working days after the completion of the inspection.

d. The application information for an initial application for licensure shall be complete and shall be reviewed by the department prior to a scheduled on-site inspection.

155.10(3) *Board action.* The board shall meet to consider all cases involving issuance of a license. Upon approval of an application for licensure by the board, a license shall be issued by the department.

a. Board hearing preparation. The division will prepare all documents with a final recommendation for licensing determination to be presented at a board meeting within 120 days from the site visit. The division shall provide public notice of the date, time, and place of the meeting and the names of applicants to be reviewed and processed.

(1) The division shall provide notice to the program 30 days prior to the board meeting notifying the program director and board chairperson of the time, place, and date the board will review and act upon the application for the program along with the results of the inspection.

(2) The division shall provide to all board members the following information on each application to be processed at the next board meeting: reports of the on-site program licensure inspections, and a final recommendation for licensing.

b. Board meeting format.

(1) The chairperson or designee shall call the meeting to order at the designated time.

(2) The presiding officer or designee shall give summary of each application and protocols.

(3) Opportunity shall be given all concerned parties to respond and present evidence and arguments on each application.

(4) After all concerned parties are heard, the board will make a decision as to whether the applicant should be finally approved or initially denied a license to operate a substance abuse treatment program.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.11(125,135) Suspension, revocation, or refusal to renew a license.

155.11(1) The board may suspend or revoke a license or refuse to renew a license for any of the following reasons:

a. Failure to adequately complete the application or renewal application process or submission of fraudulent or misleading information in the application or renewal process.

b. Failure to obtain the minimum score required for a one-, two- or three-year license.

c. Violation by a program, program employee or agent of any statute or rule pertaining to treatment programs, including a violation of any provision of this chapter.

d. Failure to comply with licensure, inspection, health, fire, occupancy, safety, sanitation, zoning, or building code or regulations required by federal, state, or local law.

e. Receiving a report from an accreditation body sanctioning, modifying, terminating, or withdrawing the accreditation of the program.

f. Suspension, revocation, refused renewal, or refused issuance of a federal registration to distribute or dispense methadone or other controlled substances.

g. Committing or permitting or aiding or abetting the commission of an unlawful act within a facility.

h. Conviction of a member of the governing body, a director, administrator, chief executive officer, or other managing staff member, of a felony or misdemeanor involving the management or operation of the facility or which is directly related to the operation or integrity of the facility.

i. Use of untruthful or improbable statements in advertising.

j. Conduct or practices found by the board to be detrimental to the general health, safety, or welfare of a client/patient or member of the general community.

k. Violating a client/patient's confidentiality or willful, substantial, or repeated violations of a client/patient's rights.

l. Defrauding a client/patient, potential client/patient, or third-party payor.

m. Inappropriate conduct by program staff, including sexual or other harassment or exploitation of a program client/patient, volunteer, trainee or employee.

n. Utilization of treatment techniques which endanger the health, safety, or welfare of a client/patient.

o. Discrimination or retaliation against a client/patient or employee who has submitted a complaint or information to the department.

p. Failure to allow an employee or agent of the department access to the facility for the purpose of inspection, investigation, or other information collection duties necessary to the performance of the department's duties.

q. Failure to submit an acceptable written plan of corrective action or failure to comply with a written plan of corrective action issued pursuant to 155.3(2), 641—155.9(125,135), or 155.16(4)*"e."*

r. Violating an order of the board or violating the terms or conditions of a consent agreement or informal settlement between a program and the board.

155.11(2) Initial notice from board. When the board determines to deny a renewal, suspend or revoke a license, the board shall notify the licensee by certified mail, return receipt requested, of the board's intent to suspend, revoke, or refuse to renew the license and the changes that must be made in the licensee's operation to avoid such action. The initial notice shall further provide the licensee the opportunity to submit either a written plan of corrections or written objections to the department within 20 days from the receipt of notice from the board.

155.11(3) Correction of issues or objections.

a. Written plan of corrections. If a licensee submits a written plan of corrections, the licensee shall have 60 days from the date of submission within which to show compliance with the plan of corrections. The licensee shall submit any information to the board that the licensee deems pertinent to show compliance with the plan of corrections.

b. Objections. If a licensee submits written objections, the licensee shall submit to the board any information that the licensee deems pertinent which supports the licensee's defense.

155.11(4) Decision of board. Following receipt of a written plan of corrections and expiration of the 60-day time period, or following receipt of written objections, or when objections or notice of corrections have not been received within the 20-day time period, the board may meet to determine whether to proceed with the disciplinary action. The licensee shall receive notice of this meeting in the same manner as provided by 155.8(1)*"a."*

155.11(5) Notice of decision and opportunity for contested case hearing.

a. When the board determines to suspend, revoke or not renew a license, the licensee shall be given written notice by restricted certified mail.

b. The licensee may request a hearing on the determination. The request must be in writing and mailed to the department address within 30 days of the notice issued by the board. The request shall be sent by certified mail, return receipt requested. Failure to request a hearing will result in final action by the board.

155.11(6) Summary suspension. If the board finds that the health, safety or welfare of the public is endangered by continued operation of a treatment program, summary suspension of a license may be ordered pending proceedings for revocation or other actions. These proceedings shall be promptly instituted and determined.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.12(125,135) Contested case hearing. Programs that wish to contest the denial, suspension, revocation or refusal to renew their license shall be afforded an opportunity for a hearing before an administrative law judge from the Department of Inspections and Appeals. The program will be notified in writing, return receipt requested, of the date of the hearing, no less than 30 days before the hearing.

155.12(1) *Failure to appear.* If a party fails to appear in a contested case hearing proceeding after proper service of notice, the administrative law judge shall, in such a case, enter a default judgment against the party failing to appear.

155.12(2) *Conduct of hearing.* Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense.

a. The hearing shall be informal and all relevant evidence admissible. Effect will be given to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted

in the record. When the hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.

b. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.

c. Witnesses present at the hearing shall be subject to cross-examination by any party as necessary for a full and true disclosure of the facts.

d. The record in a contested case shall include:

(1) All pleadings, motions and intermediate rulings.

(2) All evidence received or considered and all other submissions.

(3) A statement of all matters officially noticed.

(4) All questions and offers of proof, objections and rulings therein.

(5) All proposed findings and exceptions.

(6) Any decision, opinion or report by the officer presiding at the hearing.

e. Oral proceedings shall be open to the public and shall be recorded either by mechanized means or by certified shorthand reporters. Oral proceedings or any part thereof shall be transcribed at the request of any party with the expense of the transcription charged to the requesting party. The recording or stenographic notes of oral proceedings or the transcription thereof shall be filed with and maintained by the agency for at least five years from the date of decision.

f. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.

155.12(3) *Continuance.* For good cause, the administrative law judge may continue hearings beyond the time originally scheduled or recessed. Requests for continuance shall be made to the administrative law judge in writing at least three days prior to the scheduled hearing date. Continuances will not be granted less than three days before the hearing except for exigent circumstances.

155.12(4) *Decision.* Findings of fact shall be based solely on the evidence in the record and upon matters officially noticed in the record.

a. The decision of the administrative law judge shall be the final decision unless there is an appeal to the board within 20 days of the receipt of the decision.

b. A proposed or final decision or order in a contested case hearing shall be in writing. A proposed or final decision shall include findings of fact and conclusions of law, separately stated. Parties will be promptly notified of each proposed or final decision or order by the delivery to them of a copy of such decision or order by certified mail, return receipt requested. In the case of a proposed decision, parties shall be notified of the right to appeal the decision to the board.

155.12(5) *Appeal to the board.*

a. Either party may request the board review the proposed decision. The request shall be in writing and mailed within 20 days of receipt of the proposed decision.

b. The parties shall have an opportunity to submit briefs to the board. The board will review the record and any briefs. No new evidence shall be admitted unless requested and allowed by the board.

c. Oral presentation will be made to the board at a time set by the board.

d. The board shall issue its decision in writing within 30 days after conclusion of the hearing.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.13(125,135) Rehearing application. Any party may file an application for rehearing, stating the specific grounds therefor and the relief sought, within 20 days after the issuance of any final decision by the board in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining therein. Such an application for rehearing shall be deemed to have been denied unless the board grants the application within 20 days after its filing.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.14(125,135) Judicial review. A licensee who is aggrieved or adversely affected by the board's final decision and who has exhausted all adequate administrative remedies may seek judicial review of the board's decision pursuant to and in accordance with Iowa Code section 17A.19.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.15(125,135) Reissuance or reinstatement. After suspension, revocation or refusal to renew a license, the affected licensee shall not have the license reissued or reinstated within one year of the effective date of the suspension, revocation or expiration upon refusal to renew, unless by order of the board. After that time, proof of compliance with the licensure standards must be presented to the board prior to reinstatement or reissuance of a license.
[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.16(125,135) Complaints and investigations.

155.16(1) *Complaints.* Any person may file a complaint with the department against any program licensed pursuant to this chapter. The complaint shall be made in writing and shall be mailed or delivered to the division director at the Division of Behavioral Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. A complaint form may be downloaded on-line at: http://www.idph.state.ia.us/bh/common/pdf/substance_abuse/complaint_form.pdf. The complaint shall include the name and address of the complainant, the name of the program, and a concise statement of the allegations against the program, including the specific alleged violations of Iowa Code chapter 125 or this chapter, if known. A complaint may also be initiated upon the board's own motion pursuant to evidence received by the department. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

155.16(2) *Evaluation and investigation.* Upon receipt of a complaint, the department shall make a preliminary review of the allegations contained in the complaint. Unless the department concludes that the complaint is intended solely to harass a program or lacks a reasonable basis, it shall conduct an on-site investigation of the program which is the subject of the complaint as soon as is practicable. The program which is the subject of the complaint shall be given an opportunity to informally respond to the allegations contained in the complaint either in writing or through a personal interview or conference.

155.16(3) *Investigative report.* Within 30 working days after completion of the investigation, the department shall prepare a written investigative report and shall submit the report to the executive director of the program, the chairperson of the governing body, and the board. This report shall include the nature of the complaint and shall indicate if the complaint allegations were substantiated, unsubstantiated, or undetermined, the basis for the finding, the specific statutes or rules at issue, a response from the program, if received, and a recommendation for action.

155.16(4) *Review of investigations.* The board shall review the investigative report at its next regularly scheduled meeting and shall determine appropriate action.

a. Closure. If the board determines that the allegations contained in the complaint are unsubstantiated, the board shall close the case and shall promptly notify the complainant and the program by letter.

b. Referral for further investigation. If the board determines that the case warrants further investigation, it shall refer the case to the department for further investigation.

c. Written plan of corrective action. If the board determines that the allegations contained in the complaint are substantiated and corrective action is warranted, the board may require the program to submit and comply with a written plan of corrective action. A program shall submit a written plan of corrective action to the department within 20 working days after receiving a request for such plan. The written plan of corrective action shall include a plan for correcting violations as required by the board and a time frame within which such plan shall be implemented. The plan is subject to department approval. Requiring a written plan of corrective action is not formal disciplinary action. Failure to submit or comply with a written plan of corrective action may result in formal disciplinary action against the program.

d. *Disciplinary action.* If the board determines that the allegations contained in the complaint are substantiated and disciplinary action is warranted, the board may proceed with such action in accordance with rule 641—155.11(125).

155.16(5) *Confidential information and public information.* Information contained in a complaint may be confidential pursuant to Iowa Code section 22.7(2), 22.7(18), or 125.37 or any other provision of state or federal law. Investigative reports, written plans of corrective action, and all notices and orders issued pursuant to rule 641—155.11(125,135) shall refer to client/patients by number and shall not include any other client/patient identifying information. Investigative reports, written plans of corrective action, and all notices and orders issued pursuant to rule 641—155.11(125,135) shall be available to the public as open records pursuant to Iowa Code chapter 22.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.17 Reserved.

641—155.18(125,135) Deemed status. The board shall grant deemed status to programs accredited either by a recognized national or not-for-profit accreditation body when the board determines that the accreditation is for the same services. Problem gambling treatment components shall not be granted deemed status under this rule, unless specifically reviewed by the accreditation body.

155.18(1) National accreditation bodies. The national accreditation bodies currently recognized as meeting board criteria for possible deemed status are:

a. Joint Commission.

b. Council on Accreditation of Rehabilitation Facilities (CARF).

c. Council on Accreditation of Children and Family Services (COA).

d. American Osteopathic Association (AOA).

155.18(2) Credentials and expectations of accreditation bodies.

a. The accreditation credentials of the bodies shall specify the types of organizations, programs and services the bodies accredit and targeted population groups, if appropriate.

b. Deemed status means that the board and division shall recognize, in lieu of their own review, an outside body's review, assessment, and accreditation of a hospital-based or freestanding community-based treatment program's operations, functioning, and services that correspond to those described in this chapter.

155.18(3) Responsibilities of programs granted deemed status.

a. When a program receives accreditation and is then granted licensure through deemed status, the program shall continue to be responsible for meeting all requirements in accordance with this chapter and all applicable laws and regulations.

b. If a program that is nationally accredited requests deemed status for services not covered by the national accreditation body's standards, but covered by this chapter, the licensing for those services shall be conducted by the division.

c. Copies of the entire CARF, Joint Commission, COA, or AOA behavioral health accreditation survey/inspection report and certificate of accreditation shall be submitted to the division with the application for deemed status provided by the division.

d. A program shall submit to the division accreditation corrective plans or written conditions to accreditation.

e. A program shall be currently accredited by a board-approved national accreditation body for services that are outlined in this chapter.

f. A program shall advise the division of any changes in the program's accreditation status, address, executive director/CEO, facility locations, or any other changes to the program/organization within 30 days of such change.

g. All survey reports for the hospital-based or freestanding community-based treatment program from the accrediting or licensing body shall be sent to the division.

h. For a program granted deemed status, the period of deemed status shall coincide with the period of time that program is awarded accreditation by the national accreditation body. However, under no circumstances shall it be longer than three years.

155.18(4) The board and division shall retain the following responsibilities and rights when deemed status is granted to program/organizations:

a. The division may conduct site follow-up visits as determined appropriate.

b. The division shall investigate all complaints that are under the authority of this chapter and recommend and require corrective action or other sanctions in accordance with 641—155.16(125,135). All complaints, findings, and required corrective action may be reported to the accreditation body.

c. The board shall review and act upon deemed status if necessary when complaints have been founded, when national accreditation bodies find instances of noncompliance with accreditation, when the accreditation status of the program expires without renewal, when the program's accreditation status is downgraded or withdrawn by the accreditation body, or when focused reviews find instances of noncompliance.

155.18(5) *Continuation of deemed status.* The program shall submit a copy of all CARF, Joint Commission, COA, or AOA behavioral health accreditation survey reports to the division. Applications for continuation of deemed status shall be submitted pursuant to 155.5(3).

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.19(125,135) Funding. The issuance of the license to any program shall not be construed as a commitment on the part of either the state or federal government to provide funds to such licensed program.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.20(125,135) Inspection. Each applicant or licensee agrees as a condition of licensure:

155.20(1) To permit properly designated representatives of the department to enter into and inspect any and all premises of programs for which a license has been either applied or issued to verify information contained in the application or to ensure compliance with all laws, rules, and regulations relating thereto, during all hours of operation of said facility and at any other reasonable hour.

155.20(2) To permit properly designated representatives of the department to audit and collect statistical data from all records maintained by the licensee. A facility shall not be licensed which does not permit inspection by the department or examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the board deems relevant to the establishment of such a system.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.21(125,135) General standards for all treatment programs. The following standards shall apply to all treatment programs in the state of Iowa regardless of the category of treatment services provided by such programs. In situations where differences between general standards for all treatment programs and specific standards occur, both general and specific standards must be met.

155.21(1) *Governing body.* Each program shall have a formally designated governing body that is representative of the community being served, complies with Iowa Code chapter 504, and is the ultimate authority for the overall program operations. Persons in private practice as sole practitioners shall be exempt from this subrule except for requirements to have malpractice and liability insurance.

a. The governing body shall develop and adopt written bylaws and policies that define the powers and duties of the governing body, its committees, advisory groups, and the executive director. These bylaws shall be reviewed and revised by the governing body as necessary.

b. The bylaws shall minimally specify the following:

(1) The type of membership;

(2) The term of appointment;

(3) The frequency of meetings;

(4) The attendance requirements; and

(5) The quorum necessary to transact business.

c. Minutes of all meetings shall be kept and be available for review by the department and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of members attending;

(3) Topics discussed; and

(4) Decisions reached and actions taken.

d. The duties of the governing body shall include, but not necessarily be limited to, the following:

(1) Appointment of a qualified executive director who shall have the responsibility and authority for the management of the program in accordance with the governing body's established policies;

(2) Establish an effective control which will ensure that quality services are delivered;

(3) Review and approve the program's annual budget; and

(4) Approve all contracts.

e. The governing body shall develop and approve policies for the effective operation of the program.

f. The governing body shall be responsible for all funds, equipment, supplies and the facility in which the program operates. The governing body shall be responsible for the appropriateness and adequacy of services provided by the program.

g. The governing body shall at least annually prepare a report which will include, but not necessarily be limited to, the following items:

(1) The name, address, occupation, and place of employment of each governing body member;

(2) Any family relationships which a member of the governing body may have to a program staff member; and

(3) Where applicable, the name and address of all owners or controlling parties whether they are individuals, partnerships, corporation body, or subdivision of other bodies, such as a public agency, or religious group, fraternity, or other philanthropic organization.

h. The governing body shall assume responsibility in seeing that the program has malpractice and liability insurance and a fidelity bond.

155.21(2) *Executive director.* This individual shall have primary responsibility for the overall program operations. The duties of the executive director shall be clearly defined by the governing authority, when applicable, in accordance with the policies established by the governing body.

155.21(3) *Clinical oversight.* The program shall have appropriate clinical oversight to ensure quality of clinical services provided to client/patients. This may be provided in-house or through consultation.

Clinical oversight may include assisting the program in developing policies and procedures relating to the assessment and treatment of psychopathology, assisting in the training of the staff and providing assistance to the clinical staff in assessment or treatment. The executive director or designee shall be ultimately responsible for clinical services and implementation of treatment services to client/patients.

155.21(4) *Staff development and training.* There shall be written policies and procedures that establish staff development. Staff development shall include orientation for staff and opportunities for continuing job-related education. For corporations organized under Iowa Code chapter 496C and sole practitioners, documentation of continuing education to maintain professional license or certification as specified in 155.21(8) will meet the requirements of this subrule.

a. Evidence of professional education, certification as specified in 155.21(8), licensing, or orientation which includes the following: psychosocial, medical, pharmacological, confidentiality, and tuberculosis and blood-borne pathogens; an orientation to the program and community resources; counseling skill development; HIV/AIDS (human immunodeficiency virus/acquired immune deficiency syndrome) information/education; and the attitudes, values and lifestyles of racially diverse cultures, other cultures and special populations.

b. The program shall establish on-site training programs or enter into relationships with outside resources capable of meeting staff training needs.

c. The staff development program shall take steps to ensure that staff members are kept informed of new developments in the field of assessment, evaluation, placement, treatment and rehabilitation.

d. In-service training programs shall be instituted when program operations or functions are changed and shall be designed to allow staff members to develop new skills so that they may effectively adapt to such changes.

e. Staff development activities and participation in state, national and regional training shall be planned and scheduled. These activities shall be documented in order to evaluate their scope, effectiveness, attendance, and amount of time spent on such efforts. The written plan for on-site staff development and activities for professional growth and development of personnel shall be based on the annual needs assessment and shall be available to all personnel.

f. Minutes shall be kept of on-site training activities and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of persons attending; and

(3) Topics discussed, to include name and title of presenters.

g. The individual responsible for supervising staff development activities shall conduct at least an annual needs assessment.

155.21(5) *Management information system.* Programs receiving Medicaid or state funding and programs performing OWI evaluations in accordance with 641—Chapter 157 shall submit client/patient data to the Iowa Department of Public Health, Division of Behavioral Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075, in accordance with reporting system procedures.

155.21(6) *Procedures manual.* All programs shall develop and maintain a procedures manual. This manual shall define the program's policies and procedures to reflect the program's activities. Revisions shall be entered with the date, name and title of the individual making the entries. This manual shall contain all of the required written policies, procedures, definitions, and all other documentation outlined throughout these standards. The manual shall contain a working table of contents covering all policies and procedures mandated by this chapter.

155.21(7) *Fiscal management.* The program shall ensure proper fiscal management which shall include the following:

a. The preparation and maintenance of an annual written budget which shall be reviewed and approved by the governing body prior to the beginning of the budget year.

b. The fiscal management system shall be maintained in accordance with generally accepted accounting principles, including internal controls to reasonably protect agency assets. This shall be verified by an independent fiscal audit of the program by the state auditor's office or certified public accountant based on an agreement entered into by the governing body. An annual fiscal audit shall not be required for programs with an annual budget of $75,000 or less.

c. There shall be an insurance program that provides for the protection of the physical and financial resources of the program which provides coverage for all people, buildings, and equipment. The insurance program shall be reviewed annually by the governing body.

d. Assessment and evaluation programs shall make public the OWI evaluation fees, and the client/patient shall be informed of the fee at the time of scheduling the appointment for the evaluation.

155.21(8) *Personnel.* Written personnel policies and procedures shall be developed by all programs except for sole practitioners. All program staff shall subscribe to a code of conduct found in professional certification or licensure as specified in 155.21(8).

a. All programs shall have written policies and procedures that address the following areas:

(1) Recruitment, selection, and certification of staff members;

(2) Recruitment and selection of volunteers;

(3) Wage and salary administration;

(4) Promotions;

(5) Employee benefits;

(6) Working hours;

(7) Vacation and sick leave;

(8) Lines of authority;

(9) Rules of conduct;

(10) Disciplinary actions and termination of employees;

(11) Methods for handling cases of inappropriate client/patient care;

(12) Work performance appraisal;

(13) Employee accidents and safety;

(14) Employee grievances; and

(15) Policy on staff persons suspected of using or abusing substances.

b. The written personnel policies and practices shall include an equal employment opportunity policy and an affirmative action plan for hiring members of protected classes that minimally comply with Iowa civil rights commission rules and any local ordinances.

c. There shall be written job descriptions that reflect the actual duties of the employee.

d. Job descriptions shall accurately reflect the actual job situation and shall be reviewed when necessary by the executive director or whenever there is a change in required qualifications or duties.

e. All positions shall have job descriptions included in the personnel section of the procedures manual or personnel record of the staff member.

f. The written personnel policies and practices shall include a mechanism for written evaluation of personnel performance on at least an annual basis. There shall be evidence that this evaluation is reviewed with the employee and that the employee is given the opportunity to respond to this evaluation.

g. There shall be a personnel record kept on each staff member. These records shall contain as applicable:

(1) Verification of training, experience, and all professional credentials relevant to the position;

(2) Job performance evaluations;

(3) Incident reports;

(4) Disciplinary actions taken; and

(5) Documentation of review and adherence to confidentiality laws and regulations. This review and agreement shall occur prior to assumption of duties.

h. There shall be written policies and procedures designed to ensure confidentiality of personnel records and a delineation of authorized personnel who have access to various types of personnel information.

i. Appropriately credentialed counselors.

(1) Any person providing screening, evaluations, assessments or treatment in accordance with this chapter shall meet at least one of the following conditions:

1. Currently maintain a substance abuse- or problem gambling-related credential acceptable to the department for providing treatment according to these rules.

2. Currently maintain active status as a licensed marital and family therapist (LMFT) licensed under Iowa Code chapters 154D and 147; a licensed mental health counselor (LMHC) licensed under Iowa Code chapters 154D and 147; a licensed independent social worker (LISW) licensed under Iowa Code chapters 154C and 147; or another licensed professional authorized by the Iowa Code to diagnose and treat DSM-IV disorders.

3. Currently maintain active status as a licensed master social worker (LMSW) licensed under Iowa Code chapters 154C and 147.

4. For a person beginning employment on or after July 1, 2010, at a program licensed in Iowa pursuant to this chapter who does not currently maintain one of the credentials described in "1" to "3" above, successfully complete and maintain one of those credentials within two years of the date on which the person begins to provide services.

5. Be employed before July 1, 2010, as a counselor at a program licensed in Iowa pursuant to this chapter. Those deemed qualified remain qualified only for work for that licensed program.

(2) Any person providing screening, evaluations, assessments or treatment in accordance with this chapter shall maintain a minimum of 30 hours of training within the person's primary scope of practice every two years, including a minimum of three hours of ethics training. In addition to practicing within their primary scope of practice, certified or licensed personnel may practice within a subspecialty in

accordance with this chapter by maintaining a minimum of an additional 20 hours of training within the subspecialty every two years.

j. There shall be written policies related to the prohibition of sexual harassment.

k. There shall be written policies related to the implementation of the Americans with Disabilities Act.

155.21(9) *Child abuse/dependent adult abuse/criminal history background check.*

a. Written policies and procedures shall prohibit mistreatment, neglect, or abuse of children and dependent adults and shall specify reporting and enforcement procedures for the program. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Written policies and procedures on reporting alleged violations regarding substance abuse client/patients shall be in compliance with HIPAA and DHHS, 42 CFR Part 2, regulations on Confidentiality of Alcohol and Drug Abuse Patient Records. Written policies and procedures on reporting alleged violations regarding problem gambling client/patients shall be in compliance with HIPAA and the Iowa Code. Any employee found to be in violation of Iowa Code sections 232.67 through 232.70, as substantiated by a department of human services' investigation shall be subject to the program's policies concerning dismissal.

b. For each employee working within a juvenile services area as set forth in Iowa Code section 125.14A or with dependent adults as set forth in Iowa Code chapter 235B, the personnel record shall contain at a minimum:

(1) Documentation of a criminal history background check with the Iowa division of criminal investigation on all new applicants for employment. The background check shall include asking whether the applicant has been convicted of a crime.

(2) A written, signed and dated statement furnished by a new applicant for employment which discloses any substantiated reports of child abuse, neglect or sexual abuse or dependent adult abuse.

(3) Documentation of a check after hiring on probationary or temporary status, but prior to permanently employing the individual, with the Iowa central registry for any substantiated reports of child abuse, neglect or sexual abuse pursuant to Iowa Code section 125.14A or substantiated reports of dependent adult abuse for all employees hired on or after July 1, 1994, pursuant to Iowa Code chapter 235B.

c. A person who has a record of a criminal conviction or founded child abuse report or founded dependent adult abuse report shall not be employed, unless an evaluation of the crime or founded child abuse or founded dependent adult abuse has been made by the department of human services which concludes that the crime or founded child abuse or founded dependent adult abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse or founded dependent adult abuse does exist, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation. In its evaluation, the department of human services shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation and the number of crimes or founded abuses committed by the person involved.

d. Each treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment and at least two hours of additional training every five years thereafter.

155.21(10) *Client/patient case record maintenance.* There shall be written policies and procedures governing the compilation, storage and dissemination of individual client/patient case records.

a. These policies and procedures shall ensure that:

(1) The program exercises its responsibility for safeguarding and protecting the client/patient case record against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client/patient records are kept uniform; and

(3) Entries in the client/patient case record are signed and dated.

b. The program shall provide adequate physical facilities for the storage, processing, and handling of client/patient case records. These facilities shall include suitably locked, secured rooms or file cabinets.

c. Appropriate records shall be readily accessible to those staff members providing services directly to the client/patient and other individuals specifically authorized by program policy. Records should be kept in proximity to the area in which the client/patient normally receives services.

d. The program shall have a written policy governing the disposal and maintenance of client/patient case records. Client/patient case records shall be maintained for not less than seven years from the date they are officially closed.

e. Each file cabinet or storage area containing client/patient case records shall be locked.

f. The governing body shall establish policies that specify the conditions under which information on applicants or client/patients may be released and the procedures to be followed for releasing such information. Even if a program is not federally funded, all such policies and procedures regarding substance abuse client/patients shall be in accordance with HIPAA and the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse client/patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse client/patient records, and state confidentiality laws and regulations. All such policies and procedures regarding problem gambling client/patients shall be in accordance with HIPAA and Iowa Code chapter 228.

g. Confidentiality of alcohol and drug abuse client/patient records. The confidentiality of alcohol and drug abuse client/patient records maintained by a program is protected by HIPAA and the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse client/patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse client/patient records.

h. Confidentiality of problem gambling client/patient records. The confidentiality of problem gambling client/patient records maintained by a program is protected by HIPAA and Iowa Code chapter 228.

i. The provision of treatment to a client/patient through any electronic means, including the Internet, telephone, or the Iowa communications network or any fiberoptic media, regardless of the location of the licensee, shall constitute the practice of treatment in the state of Iowa and shall be subject to regulation in accordance with Iowa Code chapter 125 and 2009 Iowa Code Supplement section 135.150 and these rules. A licensee who provides services via electronic media shall inform the client/patient of the limitations and risks associated with such services and shall document in the client/patient case record that such notice has been provided.

j. Confidentiality and transfer of records. Upon receipt of a properly executed written release of information signed by the client/patient, the program shall release client/patient records in a timely manner. A program shall not refuse to transfer or release client/patient records related to continuation of care solely because payment has not been received. A program may refuse to release client/patient records which are unrelated to continuation of care if payment has not been received. A program may refuse to file the reporting form required by 641—subrule 157.3(1), "Notice Iowa Code 321J—Confidential Medical Record," reporting screening, evaluation, and treatment completion, if payment has not been received for such services.

155.21(11) *Placement screening, admission, assessment and evaluation.*

a. The program shall conduct an initial assessment for substance abuse client/patients which shall include evaluation of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition, Revised, or other national or recognized criteria approved by the department upon granting a variance by the director in accordance with 641—Chapter 178 for determining the eligibility of individuals for placement and admission. The program shall utilize a recognized diagnostic test/tool to determine substance abuse or dependence as defined in the DSM-IV (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition).

b. The program shall conduct an initial assessment for problem gambling client/patients that shall utilize a recognized diagnostic test/tool to determine pathological gambling as defined in the DSM-IV

(Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition). The client/patient is a problem gambler if the client/patient meets any of the diagnostic criteria for pathological gambling.

c. The program shall have written policies and procedures governing a uniform assessment process that defines:

(1) The types of information to be gathered on all individuals upon admission;

(2) Procedures to be followed when accepting referrals from outside agencies or organizations;

(3) The types of records to be kept on all individuals applying for services.

d. Following admission, the comprehensive assessment (psychosocial history) shall be an analysis and synthesis of the client/patient's status and shall address the client/patient's strengths and needs, which may be documented in the comprehensive assessment or in the treatment plan, and areas of clinical concern. Sufficient information shall be collected so that a comprehensive treatment plan can be developed. The comprehensive treatment plan shall be developed within the period of time between admission and the first review date specified for that particular level of care within the management of care review process, or within 30 days for problem gambling client/patients.

e. At the time of admission, documentation shall be made that the individual has been informed of:

(1) General nature and goals of the program;

(2) Rules governing client/patient conduct and infractions that can lead to disciplinary action or discharge from the program;

(3) In a nonresidential program, the hours during which services are available;

(4) Treatment costs to be borne by the client/patient, if any;

(5) Client/patient's rights and responsibilities;

(6) Confidentiality laws, rules and regulations;

(7) HIV/AIDS information; and

(8) Safety and emergency procedures for residential, halfway house, inpatient and treatment services with housing.

f. The results of the screening and admission process shall be clearly explained to the client/patient and to the client/patient's family when appropriate. This shall be documented in the client/patient record.

155.21(12) *Treatment plans.* Based upon the initial assessment, an individualized written treatment plan shall be developed and recorded in the client/patient case record. The program shall have written policies and procedures governing a uniform process for treatment planning.

a. A treatment plan shall be developed as soon after the client/patient's admission as is clinically feasible and within the period of time between admission and the next review date specified for that particular level of care within the management of care review process.

b. The individualized treatment plan shall minimally contain:

(1) A clear and concise statement of the client/patient's current strengths and needs, which may be documented in the treatment plan or in the comprehensive assessment;

(2) Clear and concise statements of the short- and long-term goals the client/patient will be attempting to achieve;

(3) Type and frequency of therapeutic activities in which the client/patient will be participating;

(4) The staff person(s) to be responsible for the client/patient's treatment; and

(5) Treatment plans shall be culturally and environmentally specific so as to meet the needs of the client/patient. Treatment plans shall be written in a manner readily understandable to the client/patient, with assistance if necessary.

c. Treatment plans shall be developed in partnership with the client/patient and shall be reviewed by the primary counselor and the client/patient as often as necessary and in accordance with the time frames specified within the management of care review process.

d. The reviews shall consist of: a reassessment of the client/patient's current status in conjunction with the continued stay review criteria, accomplishments and needs, and a redefining of treatment goals when appropriate. The date of the review, as well as any changes, shall be recorded in the record.

e. The use of abstract terms, technical jargon, or slang should be avoided in the treatment plan. The program should provide the client/patient with copies of all treatment plans upon request.

155.21(13) *Progress notes.* A client/patient's progress and current status in meeting the goals set in the treatment plan shall be recorded in the client/patient case record. Information will be noted following each individual counseling session and a summary of group counseling services shall be documented at least weekly.

a. Entries shall be filed in chronological order and shall include the date services were provided or observations made, the date the entry was made, and the signature or initials and staff title of the individual rendering the services. All progress notes shall be legibly entered into the client/patient case record in permanent pen, by typewriter, or by computer. In those instances where records are maintained electronically, a staff identification code number authorizing access shall be accepted in lieu of a signature.

b. All entries that involve subjective interpretations of a client/patient's progress should be supplemented with a description of the actual behavioral observations which were the basis for the interpretation.

c. The use of abstract terms, technical jargon, or slang should be avoided in progress notes.

d. The program shall develop a uniform progress note format to be used by all clinical staff.

155.21(14) *Client/patient case record contents.* There shall be a case record for each client/patient that contains:

a. Results of all examinations, tests, and screening and admissions information;

b. Reports from referring sources;

c. Treatment plans;

d. Continued stay and discharge reviews;

e. Medication records, which shall allow for the monitoring of all medications administered and self-administered and the detection of adverse drug reactions. All medication orders in the client/patient case records shall define at least the name of the medication, dose, route of administration, frequency of administration, the name of the physician who prescribed the medication, and the name of the person administering or dispensing the medication;

f. Reports from outside resources shall be dated and include the name of the resource;

g. Multidisciplinary case conference and consultation notes, including the date of the conference or consultation, recommendations made, actions taken, and individuals involved;

h. Correspondence related to the client/patient, including all letters and dated notations of telephone conversations relevant to the client/patient's treatment;

i. Treatment consent forms, if applicable;

j. Information release forms;

k. Progress notes;

l. Records of services provided;

m. Discharge summaries of services provided shall be completed within 30 days of discharge and shall be sufficiently detailed to identify the types of services the client/patient has received and action taken to address specific problems identified. General terms such as "counseling" or "activities" shall be avoided in describing services;

n. Management information system or other appropriate data forms; and

o. Incident reports.

p. Records of financial counseling services for problem gambling client/patients. The treatment program shall offer financial counseling services to problem gambling client/patients. Financial counseling services shall be provided in-house or through consultation. If the treatment program determines that the problem gambling client/patient has financial problems, then financial counseling services shall include assisting the client/patient in preparing a budget and discussing financial debt options, including restitution and bankruptcy.

155.21(15) *Drug screening.* All programs serving client/patients who are receiving treatment for use or abuse of a controlled substance shall establish policies and procedures, if applicable, for the collection of urine specimens and utilization of urinalysis results.

a. Urine specimens obtained from client/patients shall be collected under direct supervision and analyzed as indicated by the program, or the program shall have a policy in place to reduce the client/patient's ability to skew the test.

b. Any laboratory used by the program for urine testing and analysis shall comply, if applicable, with all federal and state proficiency testing programs.

c. Any program conducting on-site urine testing shall comply with the Clinical Laboratory Improvement Act regulations.

d. Client/patient records shall reflect the manner in which urine test results are utilized in treatment.

e. For programs with a urinalysis service, policies shall be developed concerning measures to be employed when urine specimens of client/patients are found to contain substances.

155.21(16) *Medical services.* The treatment program shall have policies and procedures developed in conjunction with a physician to examine and evaluate client/patients/concerned persons seeking or undergoing treatment or rehabilitation.

a. Individuals who enter an inpatient, residential, halfway house, chemotherapy or emergency care facility (ASAM Levels III.1, III.3, III.5, III.7 and IV) shall undergo a medical history and physical examination. Laboratory examinations may be performed as deemed necessary by the physician. The medical history, physical examination, and necessary laboratory examinations shall be performed as soon as possible, however minimally, as follows:

(1) Inpatient medically managed and medically monitored residential treatment services (ASAM Levels IV and III.7) within 24 hours of admission;

(2) Primary residential and extended residential treatment (Levels III.5 and III.3) within 7 calendar days of admission; and

(3) Halfway house services (Level III.1) within 21 calendar days of admission.

b. For individuals who enter a Level I or Level II service, a medical history shall be obtained upon admission.

c. A program may accept medical history and physical examination results from referral sources if the medical history and examination were completed no more than 90 days prior to admission.

d. All client/patients admitted to residential, inpatient or halfway house services and high-risk outpatient client/patients shall have a tuberculosis skin test administered and read within 5 days of admission. If the client/patient has documentation of a negative tuberculosis skin test within the previous 90 days, the tuberculosis test may be accepted if the client/patient does not show any symptoms. If the client/patient has unexplained symptoms or a history of positive tuberculosis skin tests, the physician shall determine what tests are needed.

155.21(17) *Emergency medical services.* The program shall ensure, by affiliation agreement, or contract, that emergency medical services at a general hospital are available on a 24-hour basis.

a. The program will maintain emergency medical service coverage on a 24-hour, seven days a week, basis.

b. The program shall ensure that all community service providers, medical facilities, law enforcement agencies, and other appropriate personnel are informed of the 24-hour emergency services and treatment available.

155.21(18) *Medication control.* Policies and procedures shall be developed to ensure that prescription and over-the-counter drugs are administered or self-administered safely and properly in accordance with federal, state and local laws and regulations. The written policies and procedures shall include, but not be limited to, the following:

a. Authorized personnel who administer medications shall be qualified, and an updated list of such personnel shall be maintained. Only the following are designated by 657—8.32(124,155A) as qualified individuals to whom a physician can delegate the administration of controlled substances:

(1) Persons who have successfully completed a medication administration course reviewed by the board of pharmacy examiners.

(2) Advanced emergency medical technicians and paramedics.

(3) Licensed physician assistants.

(4) Licensed pharmacists.

(5) Nurse, intern or other qualified individual delegated the responsibility to administer a prescription drug by a practitioner, licensed by the appropriate state board, to administer drugs to patients, in accordance with Iowa Code section 155A.4(2)*"c."*

b. Medications shall be administered only in accordance with the instructions of the attending physician. The type and amount of the medication, the time and date, and the staff member administering the medication shall be documented in the client/patient's record.

c. Self-administration of prescription medication shall be observed by a staff member who has been oriented to the program's policies and procedures on self-administration. Self-administration of prescription medications shall be permitted only when the client/patient's medication is clearly labeled. There shall be written policies and procedures relative to self-administration of prescription medications by client/patients and only when:

(1) Medications are prescribed by a physician.

(2) The physician agrees that the client/patient can self-administer the drug.

(3) What is taken, how, and when, are documented in the record of the client/patient.

d. Drugs/medications shall be prescribed by a physician or other practitioner authorized to prescribe under Iowa law.

e. Prescription drugs shall not be administered or self-administered to a client/patient without a written order signed by a physician or other practitioner authorized to prescribe under Iowa law. All prescribed medications shall be clearly labeled indicating the client/patient's full name, physician's name, prescription number, name and strength of the medication, dosage, directions for use, date of issue; and name, address and telephone number of the pharmacy or physician issuing the medication. Medications shall be packaged and labeled according to state and federal guidelines.

f. If the medications the client/patient brings to the program are not to be used, they shall be packaged, sealed and stored. The sealed packages of medications shall be returned to the client/patient, family or significant others at the time of discharge.

g. Accountability and control of medications.

(1) There shall be a specific routine for medication administration, indicating dose schedules and standardization of abbreviations.

(2) There shall be specific methods for control and accountability of medication products throughout the program.

(3) The staff member in charge of medications shall provide for monthly inspection of all storage units.

(4) Medication containers having soiled, damaged, illegible, or makeshift labels shall be returned to the issuing pharmacist, pharmacy, or physician for relabeling or disposal.

(5) Unused prescription drugs prescribed for residents who have left the facility without their medication shall be destroyed by the person in charge with a witness and notation made on the resident's record. When a resident is discharged or leaves the facility, medications currently being administered shall be sent, in the original container, with the resident or with a responsible agent, and with the approval of the physician.

h. Medication storage shall be maintained in accordance with the security requirements of federal, state and local laws.

(1) All medication shall be maintained in locked storage. Controlled substances shall be maintained in a locked box within the locked cabinet.

(2) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items.

(3) Disinfectants and medication for external use shall be stored separately from internal and injectable medications.

(4) The medication for each client/patient shall be stored in the original containers.

(5) All potent poisonous or caustic medication shall be plainly labeled, stored separately from other medication in a specific well-illuminated cabinet, closet, or storeroom, and made accessible only to authorized persons.

i. Dispensed from a licensed pharmacy. Medication provided to a client/patient shall be dispensed only from a licensed pharmacy in the state of Iowa in accordance with the pharmacy laws in the Code of Iowa, or from a licensed pharmacy in another state according to the laws of that state, or by a licensed physician.

j. Use of medications. Prescription medications prescribed for one resident may not be administered to or allowed in the possession of another resident.

k. Patient reaction. Any unusual client/patient reaction to a medication shall be documented in the client/patient record and reported to the attending physician immediately.

l. Dilution or reconstitution of medication. Dilution or reconstitution and labeling of medication shall be done only by a licensed pharmacist.

155.21(19) *Management of care.* The program shall ensure appropriate level of care utilization by implementing and maintaining the written placement screening, continuing service, and discharge criteria process developed by the department.

a. The program shall also address underutilization, overutilization, and the effective use of levels of care available.

b. The time frames for management of care activities minimally shall be implemented within 30 days for Levels I and III.1; within 7 days for Levels II.1, II.5, III.3 and III.5; and daily for Levels III.7 and IV.

c. The discharge planning process shall begin at admission and shall include a determination of the client/patient's continued need for treatment services and development of a plan to address ongoing client/patient needs posttreatment. Discharge planning may or may not include a document identified as a discharge plan.

155.21(20) *Quality improvement.* The program shall have an ongoing quality improvement program designed to objectively and systematically monitor and evaluate the quality and appropriateness of client/patient care, pursue opportunities to improve client/patient care, and resolve identified problems. Quality improvement efforts shall be facilitywide in scope and include review of clinical and professional services.

a. There shall be a written plan for a quality improvement program that describes the objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities.

b. The program shall establish written policies and procedures to both describe and document the quality improvement of the program's monitoring and evaluation activities. The policies and procedures shall ensure that:

(1) Information is collected or screened by a designated individual, individuals, or committee. Quality improvement activities may be contracted through all outside resources;

(2) Objective criteria shall be utilized in the development and application of criteria relating to the care or service it provides; and

(3) Objective criteria shall be utilized in the evaluation of the information collected in order to identify important problems in, or opportunities to improve, client/patient care and clinical performance.

c. The program shall document that the quality of client/patient care is improved and identified problems are resolved through actions taken as appropriate by the program's administrative and supervisory staffs and through professional staff functions.

d. Necessary information shall be communicated among program components, modalities, or services when problems or opportunities to improve client/patient care involve more than one program component or service.

e. The program shall ensure that the status of identified problems is tracked to ensure improvement or resolution.

f. Information from program components or services and the findings of discrete quality improvement activities are used to detect trends, patterns of performance, or potential problems that affect more than one program component or service.

g. The objectives, scope, organization, and effectiveness of the quality improvement program are evaluated at least annually and revised as necessary.

155.21(21) *Building construction and safety.* All buildings in which client/patients receive screenings, evaluations, assessments or treatment shall be designed, constructed, equipped, and maintained in a manner that provides for the physical safety of client/patients, personnel, and visitors.

a. If required by local jurisdiction, all programs shall maintain a certification of occupancy.

b. During all phases of construction or alterations of buildings, the level of life safety shall not be diminished in any occupied area. The construction shall be in compliance with all applicable federal, state, and local codes.

c. New construction shall comply with Iowa Code chapter 104A and all applicable federal and local codes and provide for safe and convenient use by disabled individuals.

d. All programs shall have written policies and procedures to provide a safe environment for client/patients, personnel, and visitors and to monitor that environment. The program shall document implementation of the procedures. The written policies and procedures shall include, but not be limited to, the following:

(1) The process for the identification, development, implementation, and review of safety policies and procedures for all departments or services.

(2) The promotion and maintenance of an ongoing, facilitywide hazard surveillance program to detect and report all safety hazards related to client/patients, visitors, and personnel.

(3) The process by which the staff is to dispose of biohazardous waste within the clinical service areas.

(4) All program areas.

1. Stairways, halls, and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

2. Radiators, registers, and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

3. For juvenile facilities, fuse boxes shall be under lock and key or six feet above the floor.

4. Facilities shall have written procedures for the handling and storage of hazardous materials.

5. Facilities shall have policies and procedures for weapons removal.

6. Swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

7. Facilities shall have policies regarding fishing ponds, lakes, or any bodies of water located on or near the program and accessible to the client/patient.

155.21(22) *Outpatient facility.* The outpatient facility shall be safe, clean, well ventilated, properly heated, free from vermin and rodents and in good repair.

a. The facility shall be appropriate for providing services available from the program and for protecting confidentiality.

b. Furniture shall be in good repair.

c. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed at the facility.

155.21(23) *Therapeutic environment.* All programs shall establish an environment that enhances the positive self-image of client/patients and preserves their human dignity. The grounds of the program shall have adequate space for the program to carry out its stated goals. When client/patient needs or program goals involve outdoor activities, these activities and programs shall be appropriate to the ages and clinical needs of the client/patient.

a. All services shall be accessible to people with disabilities or the program shall have written policies and procedures that describe how people with disabilities can attain access to the facility for necessary services. All programs shall comply with the Americans with Disabilities Act.

b. The waiting or reception areas shall be of adequate size, have appropriate furniture and be located so as to ensure confidentiality of client/patients in session or receiving services.

c. Program staff shall be available in waiting or reception areas so as to address the needs of the client/patients and visitors.

d. The program shall have written policies and procedures regarding chemical substances in the facility.

e. Smoking shall be prohibited within any facilities or any portion of a facility used for outpatient drug and alcohol treatment services and programs. Smoking shall be prohibited, except in designated areas within facilities or portions of facilities used for inpatient and residential drug and alcohol treatment services.

f. A program or person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under 18 years of age, and a person under 18 years of age shall not smoke, use, purchase, or attempt to purchase, any tobacco, tobacco products, or cigarettes.

g. There shall be written policies and procedures to address the following:

(1) There shall be a policy to inform client/patients of their legal and human rights at the time of admission;

(2) Client/patient communication, opinions, or grievances, with a mechanism for redress;

(3) Prohibition of sexual harassment; and

(4) Client/patient rights to privacy.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.22(125,135) Inpatient, residential, and halfway house safety. Specific safety standards for inpatient, residential and halfway house safety.

155.22(1) *Health and fire safety inspections.* Inpatient, residential and halfway house substance abuse treatment facilities shall comply with appropriate department of inspections and appeals rules, state fire marshal's rules and fire ordinances, and appropriate local health, fire, occupancy code, and safety regulations. The program shall maintain documentation of such compliance.

a. Inpatient, residential and halfway house substance abuse treatment facilities required to be licensed by the department of public health shall comply with standards for food service sanitation in accordance with rules promulgated by the department of inspections and appeals pursuant to 481—Chapter 32 of the Iowa Administrative Code and Iowa Code chapter 137B.

b. Food service operations in substance abuse inpatient, residential, and halfway house treatment facilities shall be inspected on an annual basis by the department of inspections and appeals or appropriate local boards of health having agreements with the department of inspections and appeals to conduct such inspections.

c. The use of door locks or closed sections shall be approved by the fire marshal, professional staff and governing body.

155.22(2) *Emergency preparedness.* The inpatient, residential and halfway house programs shall have an emergency preparedness program designed to provide for the effective utilization of available resources so that client/patient care can be continued during a disaster.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.23(125,135) Specific standards for inpatient, residential, and halfway house service. An inpatient, residential, and halfway house service shall be designed to provide comprehensive diagnostic, treatment and rehabilitation services in a 24-hour therapeutic setting.

155.23(1) *Hours of operation.* An inpatient, residential, and halfway house service shall operate seven days per week, 24 hours a day.

155.23(2) *Meals.* Inpatient and residential programs shall provide a minimum of three meals per day to each client/patient enrolled in the program. Inpatient, residential, and other programs where client/patients are not present during mealtime shall make provisions to make available the necessary meals. Menus shall be prepared in consultation with a dietitian. If client/patients are allowed to prepare meals, the program shall document conformity with all commonly accepted policies and procedures of state health regulations and food hygiene.

155.23(3) *Consultation with counsel.* An inpatient, residential, and halfway house program shall have policies and procedures which will ensure that all client/patients in a facility have opportunity for and access to consultation with legal counsel at any reasonable time.

155.23(4) *Visitation with family and friends.* An inpatient, residential, and halfway house program shall have policies and procedures which will ensure opportunities for continuing contact with family and friends. If such visiting opportunities are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client/patient record. If clinical indications require restrictions on visitation, such restrictions shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor.

The program shall establish visiting hours which shall be conspicuously displayed at the facility and in such a manner to be visible to those entering the facility.

155.23(5) *Telephone use.* An inpatient, residential, and halfway house program shall have policies and procedures which allow client/patients to conduct private telephone conversations with family and friends at the facility. If such are clinically contraindicated, they shall be approved on an individual basis by the treatment supervisor and subject to review by the executive director. The justification for restrictions shall be documented in the client/patient record. If clinical indications require restrictions, such shall be evaluated for continuing therapeutic effectiveness every seven days by the treatment supervisor and primary counselor. Access to the telephone shall be available during reasonable hours as defined by the program in written policies and procedures except for emergency calls, which may be received at the time of the call, or made when necessary.

155.23(6) *Written communication.* An inpatient, residential, and halfway house program shall have policies and procedures which ensure that neither mail nor other communications to or from a client/patient in a facility is intercepted, read, or censored.

155.23(7) *Facility.* An inpatient, residential, and halfway house facility shall be safe, clean, well-ventilated, properly heated, in good repair, and free from vermin to ensure the well-being of residents.

a. Client/patient bedrooms shall include:

(1) A sturdily constructed bed;

(2) A clean mattress protected with a clean mattress pad;

(3) A designated space for personal possessions and for hanging clothing in proximity to the sleeping area; and

(4) Windows in bedrooms shall have curtains or window blinds.

b. Sleeping areas shall include:

(1) Doors for privacy;

(2) Partitioning or placement of furniture to provide privacy for all client/patients;

(3) The number of client/patients in a room shall be appropriate to the goals of the facility and to the ages, developmental levels, and clinical needs of the client/patients;

(4) Client/patients will be allowed to keep and display personal belongings and add personal touches to the decoration of their rooms in accordance with program policy;

(5) Staff shall respect the client/patient's right to privacy by knocking on the door of the client/patient's room before entering.

c. Clean linen, towels and washcloths shall be available minimally on a weekly basis and more often as needed.

d. Bathrooms shall provide residents with facilities necessary for personal hygiene and personal privacy, including:

(1) A safe supply of hot and cold running water which is potable;

(2) Clean towels, electric hand dryers or paper towel dispensers, and an available supply of toilet paper and soap;

(3) Natural or mechanical ventilation capable of removing odors;

(4) Tubs or showers shall have slip-proof surfaces;

(5) Partitions with doors which provide privacy if a bathroom has multiple toilet stools;

(6) Toilets, wash basins, and other plumbing or sanitary facilities shall at all times be maintained in good operating condition; and

(7) The ratio of bathroom facilities to residents shall be one tub or shower head per 12 residents, one wash basin per 12 residents and one toilet per 8 residents.

(8) If the facility is coeducational, the program shall designate and so identify separate bathrooms for male and female client/patients.

e. There shall be a written plan outlining procedures to be followed in the event of fire or tornado. These plans shall be conspicuously displayed on each floor or dormitory area that client/patients, residents, or visitors occupy at the facility and shall be explained to all inpatient, residential, and halfway house client/patients as a part of their orientation to the program. Fire drills shall be conducted at least monthly and tornado drills conducted during the tornado season from April through October.

f. Written reports of annual inspections by state or local fire safety officials shall be maintained with records of corrective action taken by the program on recommendations articulated in such reports.

g. Smoking shall not be permitted in bedrooms.

h. Every facility shall have an adequate water supply from an approved source. A municipal water system shall be considered as meeting this requirement. Private water sources shall be tested annually.

i. The facility shall allow for the following:

(1) Areas in which a client/patient may be alone when appropriate; and

(2) Areas for private conversations with others.

j. Articles of grooming and personal hygiene that are appropriate to the client/patient's age, developmental level, and clinical state shall be readily available in a space reserved near the client/patient's sleeping area. If clinically indicated as determined by the treatment supervisor, a client/patient's personal articles may be kept under lock and key by staff. If access to potentially dangerous grooming aids or other personal articles is contraindicated for clinical reasons, a member of the professional staff shall explain to the client/patient the conditions under which the articles may be used; and the clinical rationale for these conditions shall be documented in the client/patient case record.

k. Housekeeping. If client/patients take responsibility for maintaining their own living quarters and for day-to-day housekeeping activities of the program, these responsibilities shall be clearly defined in writing and be a part of the client/patient orientation program. Staff assistance and equipment shall be provided as needed.

l. Clothing. Client/patients shall be allowed to wear their own clothing in accordance with program rules. If clothing is provided by programs, it shall be suited to the climate and appropriate. In addition, a laundry room shall be accessible so client/patients may wash their clothing.

m. Noise-producing equipment. The program shall ensure that the use and location of noise-producing equipment and appliances, such as television sets, radios, and CD players do not interfere with clinical and therapeutic activities.

n. Recreation and outdoor activities. The program shall provide recreation and outdoor activities, unless contraindicated for therapeutic reasons.

155.23(8) *Religion-culture.* The inpatient, residential, and halfway house program shall have a written description of its religious orientation, particular religious practices that are observed, and any religious restrictions. This description shall be provided to the client/patients, parent(s) or guardian, and the placing agency at the time of admission in compliance with HIPAA and DHHS, 42 CFR Part 2, regulations on Confidentiality of Alcohol and Drug Abuse Patient Records. This information shall also be available to adults during orientation. The client/patient shall have the opportunity to participate in religious activities and services in accordance with the client/patient's own faith or that of a minor client/patient's parent(s) or guardian. The facility shall, when necessary and reasonable, arrange transportation for religious activities.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.24(125,135) Specific standards for inpatient, residential, and halfway house services for juveniles. An inpatient, residential, and halfway house program that houses one or more juveniles under the age of 18 must also comply with the following standards.

155.24(1) *Personal possessions.* The inpatient, residential, and halfway house program shall allow a child to bring personal belongings. However, the inpatient, residential, and halfway house program

shall, as necessary, limit or supervise the use of these items. In addition, the program shall ensure that each child has adequate, clean, well-fitting, attractive, and seasonable clothing as required for health, comfort, and physical well-being. The clothes should be appropriate to age, sex and individual needs.

155.24(2) *Family involvement.* There shall be written policies and procedures for family involvement that shall encourage continued involvement of the family.

155.24(3) *Children's money.* Money earned or received as a gift or as an allowance by a child in care shall be deemed to be that child's personal property. The program shall have a written policy on the child's use of funds. The program shall maintain a separate accounting system for children's money.

155.24(4) *Discipline.* The inpatient, residential, and halfway house program shall have written policies and procedures regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Agency staff shall be in control of and responsible for discipline at all times. Discipline shall not include the withholding of basic necessities such as food, clothing, or sleep.

a. The program shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy is to be communicated, in writing, to all staff of the facility.

b. Behavior expectations. The program shall make available to the child and the child's parents or guardian written policies regarding the following areas:

(1) The general expectations of behavior including the program's rules and practices.

(2) The range of reasonable consequences that may be used to deal with inappropriate behavior.

155.24(5) *Number of staff.* The program shall have 7 days per week, 24-hour per day coverage. The number and qualifications of the staff will vary depending on the needs of the children.

a. Inpatient, residential, halfway house programs, and community residential facilities as defined in 441—Chapter 114, shall have an on-call system operational 24 hours a day to provide supervisory consultation. The program shall have a written plan documenting this system. During prime programming time, there shall be at least a one-to-eight, staff-to-client/patient ratio.

b. Comprehensive residential facilities, as defined in 441—Chapter 115, shall have at least a one-to-five, staff-to-client/patient ratio during prime programming time. A staff person shall be in each living unit at all times when children are in residence, and there shall be a minimum of three nighttime checks between the hours of 12 midnight and 6 a.m. These checks shall be logged. Policies and procedures for nighttime checks shall be in writing.

c. The program's prime programming time shall be defined in writing.

155.24(6) *Illness, accident, death, or absence from the inpatient, residential, and halfway house program.* The program shall have written policies and procedures to notify the child's parent(s), guardian, and responsible agency of any serious illnesses, incidents involving serious bodily injury or absence, or circumstances causing removal of the child from the facility in compliance with HIPAA and DHHS, 42 CFR Part 2, regulations on Confidentiality of Alcohol and Drug Abuse Patient Records. In the event of the death of a child, the program shall immediately notify the physician, the child's parent(s) or guardian, the placing agency, and the appropriate state authority.

155.24(7) *Educational services.* An educational program shall be available for each child in accordance with abilities and needs. The educational and teaching standards established by the state department of public instruction shall be met.

155.24(8) *Needs of the juvenile.* Program services and rules shall be designed to meet individual needs of the juvenile.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.25(125,135) Specific standards for assessment and evaluation programs.

155.25(1) *Definitions.* Rescinded IAB 6/2/10, effective 7/1/10.

155.25(2) *Governing body.* Each program shall have a formally designated governing body that is representative of the community being served, complies with Iowa Code chapter 504 and is the ultimate authority for the overall program operations. Persons in private practice as sole practitioners shall be exempt from this subrule except for the requirements to have malpractice and liability insurance.

a. The governing body shall develop and adopt written bylaws and policies that define the powers and duties of the governing body, its committees, advisory groups, and the executive director. These bylaws shall be reviewed and revised by the governing body as necessary.

b. The bylaws shall minimally specify the following:

(1) The type of membership;

(2) The term of appointment;

(3) The frequency of meetings;

(4) The attendance requirements; and

(5) The quorum necessary to transact business.

c. Minutes of all meetings shall be kept and be available for review by the department and shall include, but not necessarily be limited to:

(1) Date of the meeting;

(2) Names of members attending;

(3) Topics discussed; and

(4) Decisions reached and actions taken.

d. The duties of the governing body shall include, but not necessarily be limited to, the following:

(1) Appointment of a qualified executive director who shall have the responsibility and authority for the management of the program in accordance with the governing body's established policies;

(2) Establish an effective control which will ensure that quality services are delivered;

(3) Review and approve the program's annual budget; and

(4) Approve all contracts.

e. The governing body shall develop and approve policies for the effective operation of the program.

f. The governing body shall be responsible for all funds, equipment, supplies and the facility in which the program operates. The governing body shall be responsible for the appropriateness and adequacy of services provided by the program.

g. The governing body shall at least annually prepare a report which will include, but not necessarily be limited to, the following items:

(1) The name, address, occupation, and place of employment of each governing body member;

(2) Any family relationship which a member of the governing body may have to a program staff member; and

(3) Where applicable, the names and addresses of all owners or controlling parties whether they are individuals, partnerships, corporation body, or subdivision of other bodies, such as a public agency, or religious group, fraternity, or other philanthropic organization.

h. The governing body shall assume responsibility in seeing that the program has malpractice and liability insurance and a fidelity bond.

155.25(3) *Executive director.* This individual shall have primary responsibility for the overall program operations. The duties of the executive director shall be clearly defined by the governing authority, when applicable.

155.25(4) *Clinical oversight.* The program shall have appropriate clinical oversight to ensure quality of clinical services provided to client/patients. This may be provided in house or through a consultation agreement.

155.25(5) *Staff development and training.* There shall be written policies and procedures that establish staff development. Staff development shall include orientation for staff and opportunities for continuing job-related education. For corporations organized under Iowa Code chapter 496C and sole practitioners, documentation of continuing education to maintain a professional license or substance abuse certification as specified in 155.21(8) will meet the requirement of this subrule.

a. Evidence of professional education, substance abuse certification or licensing as specified in 155.21(8), or orientation which includes the following: psychosocial, medical, pharmacological, confidentiality, tuberculosis, community resources; screening, evaluation, HIV/AIDS (human immunodeficiency virus/acquired immune deficiency syndrome) information/education; and the attitudes, values and lifestyles of racially diverse cultures, other cultures and special populations.

b. Staff development shall ensure that staff members are kept informed of new developments in the field of substance abuse screening, evaluation and placement.

155.25(6) *Management information system.* Programs receiving Medicaid or state funding and programs performing OWI evaluation in accordance with 641—Chapter 157 shall submit client/patient data to the Iowa Department of Public Health, Division of Behavioral Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075, in accordance with substance abuse reporting system procedures.

155.25(7) *Procedures manual.* All programs shall develop and maintain a procedures manual. This manual shall define the program's policies and procedures to reflect the program's activities. Revisions shall be entered with the date, name and title of the individual making the entries. This manual shall contain all of the required written policies, procedures, definitions, and all other documentation required by these standards in the following areas:

a. Legal authority and organization;

b. Personnel policies, except for sole practitioner;

c. Emergency medical services;

d. Staff development;

e. Maintenance of client/patient case records;

f. Confidentiality of client/patient records;

g. Clinical services, such as placement screening, evaluation and assessment; and

h. Relationship with other providers.

155.25(8) *Fiscal management.* The program shall ensure proper fiscal management.

a. The fiscal management system shall be maintained in accordance with generally accepted accounting principles, including internal controls to reasonably protect the agency assets.

b. The OWI evaluation fee schedule shall be made public, and the client/patient shall be informed of the fee schedule at the time of scheduling the evaluation.

c. There shall be an insurance program that provides for the protection of the physical and financial resources of the program which provides coverage for all people, buildings, and equipment. The insurance program shall be reviewed annually by the governing body.

155.25(9) *Personnel.* Written personnel policies and procedures shall be developed, except for the sole practitioner.

a. These policies and procedures shall address the following areas:

(1) Recruitment, selection, and certification of staff members;

(2) Wage and salary administration;

(3) Promotions;

(4) Employee benefits;

(5) Working hours;

(6) Vacation and sick leave;

(7) Lines of authority;

(8) Rules of conduct;

(9) Disciplinary actions and termination of employees;

(10) Methods for handling cases of inappropriate client/patient care;

(11) Work performance appraisal;

(12) Employee accidents and safety;

(13) Employee grievances; and

(14) Policy on staff persons suspected of using or abusing substances.

b. The written personnel policies and practices shall include an equal employment opportunity policy and an affirmative action plan for hiring members of protected classes that minimally comply with Iowa civil rights commission rules and any local ordinances.

c. There shall be written job descriptions that reflect the actual job situation.

d. The written personnel policies and practices shall include a mechanism for a written evaluation of personnel performance on at least an annual basis. There shall be evidence that this evaluation is reviewed with the employee and that the employee is given the opportunity to respond to this evaluation.

e. There shall be a personnel record kept on each staff member. These records shall contain as applicable:

(1) Verification of training, experience, and all professional credentials relevant to the position;

(2) Job performance evaluations;

(3) Incident reports;

(4) Disciplinary actions taken; and

(5) Documentation of review and adherence to confidentiality laws and regulations. This review and agreement shall occur prior to assumption of duties.

f. There shall be written policies and procedures designed to ensure confidentiality of personnel records and a delineation of authorized personnel who have access to various types of personnel information.

155.25(10) *Professional qualifications.*

a. Personnel conducting screenings, placements, and assessments in accordance with this chapter shall meet the requirements of 155.21(8)*"i."*

b. The sole practitioner shall subscribe to a code of conduct found in professional certification or licensure as specified in 155.21(8).

155.25(11) *Child abuse/dependent adult abuse/criminal history background check.*

a. Written policies and procedures shall prohibit mistreatment, neglect, or abuse of children and dependent adults and shall specify reporting and enforcement procedures for the program. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Written policies and procedures on reporting alleged violations regarding substance abuse client/patients shall be in compliance with HIPAA and DHHS, 42 CFR Part 2, regulations on Confidentiality of Alcohol and Drug Abuse Patient Records. Any employee found to be in violation of Iowa Code sections 232.67 through 232.70, as substantiated by a department of human services' investigation shall be subject to the program's policies concerning dismissal.

b. For each employee working within a juvenile services area as set forth in Iowa Code section 125.14A or with dependent adults as set forth in Iowa Code chapter 235B, the following, at a minimum, shall be documented:

(1) Documentation of a criminal history background check with the Iowa division of criminal investigation on all new applicants for employment. The background check shall include asking whether the applicant has been convicted of a crime.

(2) A written, signed, and dated statement furnished by a new applicant for employment which discloses any substantiated reports of child abuse, neglect, or sexual abuse or dependent adult abuse.

(3) Documentation of a check after hiring on probationary or temporary status, but prior to permanently employing the individual, with the Iowa central registry for any substantiated reports of child abuse, neglect, or sexual abuse pursuant to Iowa Code section 125.14A or substantiated reports of dependent adult abuse for all employees hired on or after July 1, 1994, pursuant to Iowa Code chapter 235B.

(4) A person who has a record of a criminal conviction or founded child abuse report or founded dependent adult abuse report shall not be employed, unless an evaluation of the crime or founded child abuse or founded dependent adult abuse has been made by the department of human services which concludes that the crime or founded child abuse or founded dependent adult abuse does not merit prohibition of employment. If a record of criminal conviction or founded child abuse or founded dependent adult abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation. In its evaluation, the department of human services shall consider the nature and seriousness of the crime or founded abuse in relation to the position sought, the time elapsed since the commission of the crime or founded abuse, the circumstances under which the crime or founded abuse was committed, the degree of rehabilitation, and the number of crimes or founded abuses committed by the person involved.

c. Each treatment staff member shall complete two hours of training relating to the identification and reporting of child abuse and dependent adult abuse within six months of initial employment, and at least two hours of additional training every five years thereafter.

155.25(12) *Client/patient case record maintenance.* There shall be written policies and procedures governing the compilation, storage and dissemination of individual client/patient case records.

a. These policies and procedures shall ensure that:

(1) The program exercises its responsibility for safeguarding and protecting the client/patient case record against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client/patient records are kept uniform; and

(3) Entries in the client/patient case record are signed and dated.

b. The program shall provide adequate physical facilities for the storage, processing, and handling of client/patient case records. These facilities shall include suitably locked, secured rooms or file cabinets.

c. Appropriate records shall be readily accessible to those staff members providing services directly to the client/patient and other individuals specifically authorized by program policy.

d. There shall be a written policy governing the disposal and maintenance of client/patient case records. Client/patient case records shall be maintained for not less than seven years from the date they are officially closed.

e. Each file cabinet or storage area containing client/patient case records shall be locked.

f. Policies shall be established that specify the conditions under which information on applicants or client/patients may be released and the procedures to be followed for releasing such information. All such policies and procedures shall be in accordance with HIPAA and the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse client/patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse client/patient records, and state confidentiality laws and regulations.

g. Confidentiality of alcohol and drug abuse client/patient records. The confidentiality of alcohol and drug abuse client/patient records maintained by a program is protected by HIPAA and the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse client/patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse client/patient records.

h. Confidentiality and transfer of records. Upon receipt of a properly executed written release of information signed by the client/patient, the program shall release client/patient records in a timely manner. A program shall not refuse to transfer or release client/patient records related to continuation of care solely because payment has not been received. A program may refuse to release client/patient records which are unrelated to continuation of care if payment has not been received. A program may refuse to file the reporting form required by 641—subrule 157.3(1), "Notice Iowa Code 321J—Confidential Medical Record," reporting screening, evaluation, and treatment completion, if payment has not been received for such services.

155.25(13) *Placement screening, evaluation and assessment.* There shall be clearly stated written criteria for determining the eligibility of individuals for placement screening evaluation and assessment.

a. The program shall have written policies and procedures governing a uniform process that defines:

(1) Procedures to be followed when accepting referrals from outside agencies or organizations;

(2) The types of records to be kept on all individuals applying for services.

b. The program shall conduct a screening, which shall include evaluation of the ASAM-PPC-2 for determining the recommendation of individuals for placement into a level of care.

c. At the time of screening, documentation shall be made that the individual has been informed of:

(1) Evaluation costs to be borne by the client/patient, if any;

(2) Client/patient's rights and responsibilities; and

(3) Confidentiality laws, rules and regulations.

d. Sufficient information shall be collected during the screening and evaluation process so that a recommendation can be made for placement into a level of care.

e. The results of the screening and evaluation process shall be clearly explained to the client/patient and to the client/patient's family when appropriate. This shall be documented in the client/patient record.

f. Programs conducting screenings and evaluations on persons convicted of operating a motor vehicle while intoxicated (OWI), Iowa Code section 321J.2, and persons whose driver's license or nonresident operating privileges are revoked under chapter 321J, shall do so in accord with and adhere to 641—Chapter 157.

155.25(14) *Client/patient case record contents.* There shall be a case record for each client/patient that contains:

a. Results of all examinations, tests, and screening and admissions information;

b. Reports from referring sources when applicable;

c. Reports from outside resources shall be dated and include the name of the resource;

d. Multidisciplinary case conference and consultation notes, including the date of the conference or consultation, recommendations made, actions taken, and individuals involved when applicable;

e. Correspondence related to the client/patient, including all letters and dated notations of telephone conversations relevant to the client/patient's treatment;

f. Information release forms;

g. Records of services provided; and

h. Management information system or other appropriate data forms.

155.25(15) *Emergency medical services.* The program shall ensure that emergency medical services are available through an affiliation agreement or contract or policy and procedure.

155.25(16) *Management of care.* The program shall ensure appropriate level of care utilization by implementing and maintaining the written placement screening.

155.25(17) *Building construction and safety.* All buildings in which client/patients receive treatment shall be designed, constructed, equipped, and maintained in a manner that provides for the physical safety of client/patients, personnel, and visitors.

a. All programs shall have written policies and procedures to provide a safe environment for client/patients, personnel and visitors. The program shall have written policies and procedures for the maintenance, supervision, and safe use of all its grounds and equipment.

b. Safety education shall include orientation of new employees to general facilitywide safety practices.

155.25(18) *Outpatient facility.* The outpatient facility shall be safe, clean, well-ventilated, properly heated and in good repair.

a. The facility shall be appropriate for providing services available from the program and for protecting client/patient confidentiality.

b. Furniture shall be clean and in good repair.

c. There shall be a written plan outlining procedures to be followed in the event of fire and tornado. This plan shall be conspicuously displayed at the facility.

d. All services shall be accessible to people with disabilities, or the program shall have written policies and procedures that describe how people with disabilities can gain access to the facility for necessary services.

e. The program shall ensure confidentiality of client/patients receiving services.

f. Smoking shall be prohibited.

155.25(19) *Client/patient rights.* The program shall maintain written policies and procedures that ensure that the legal and human rights of client/patients participating in the program are observed and protected.

a. There shall be procedures to inform all client/patients of their legal and human rights at the time of evaluation.

b. There shall be documentation of the implementation of these procedures.

c. There shall be written policies and procedures for:

(1) Client/patient communications, e.g., opinions, recommendations;

(2) Client/patient grievances, with a mechanism for redress;

(3) Prohibition of sexual harassment; and

(4) Implementation of the Americans with Disabilities Act.

d. There shall be procedures designed to protect client/patients' rights and privacy.

155.25(20) *Administrative and procedural standards.* The program shall comply with the following rules:

a. 641—155.2(125,135) Licensing.

b. 641—155.3(125,135) Type of licenses.

c. 641—155.4(125,135) Nonassignability.

d. 641—155.5(125,135) Application procedures.

e. 641—155.6(125,135) Application review.

f. 641—155.7(125,135) Inspection of licensees.

g. 641—155.8(125,135) Licenses—renewal.

h. 641—155.9(125,135) Corrective action plan.

i. 641—155.10(125,135) Grounds for denial of initial license.

j. 641—155.11(125,135) Suspension, revocation, or refusal to renew a license.

k. 641—155.12(125,135) Contested case hearing.

l. 641—155.13(125,135) Rehearing application.

m. 641—155.14(125,135) Judicial review.

n. 641—155.15(125,135) Reissuance or reinstatement.

o. 641—155.16(125,135) Complaints.

p. 641—155.17 Reserved.

q. 641—155.18(125,135) Deemed status.

r. 641—155.19(125,135) Funding.

s. 641—155.20(125,135) Inspection.

This rule is intended to implement Iowa Code section 125.13.

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

641—155.26 to **155.34** Reserved.

641—155.35(125,135) Specific standards for opioid treatment programs. All programs that use methadone or other medications approved by the Food and Drug Administration under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and the state of Iowa for use in the treatment of opioid addiction shall comply with this rule, HIPAA and Part II, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, 42 CFR Part 8, Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction, effective May 18, 2001.

155.35(1) *Definitions.*

"Accredited opioid treatment program" means an opioid treatment program that is the subject of a current, valid accreditation from an accreditation body approved by the Substance Abuse and Mental Health Services Administration (SAMHSA).

"Certification" means the process by which SAMHSA determines that an opioid treatment program is qualified to provide opioid treatment under the federal opioid treatment standards.

"Certification application" means the application filed by an opioid treatment program for purposes of obtaining certification from SAMHSA.

"Certified opioid treatment program" means an opioid treatment program that is the subject of a current, valid certification.

"Comprehensive maintenance treatment" means maintenance treatment provided in conjunction with a comprehensive range of appropriate medical and rehabilitative services.

"Detoxification treatment" means the dispensing of an opioid agonist treatment medication in decreasing doses to an individual to alleviate adverse physical or psychological effects incident to withdrawal from the continuous or sustained use of an opioid drug and as a method of bringing the individual to a drug-free state within such a period.

"Interim maintenance treatment" means detoxification treatment for a period of more than 30 days but not in excess of 180 days.

"Maintenance treatment" means the dispensing of an opioid agonist treatment medication at stable dosage levels for a period in excess of 21 days in the treatment of an individual for opioid addiction.

"Medical and rehabilitative services" means services such as medical evaluations, counseling, and rehabilitative and other social programs (e.g., vocational and educational guidance, employment placement) that are intended to help patients in opioid treatment programs become or remain productive members of society.

"Medical director" means a physician who is licensed to practice medicine in accordance with Iowa Code chapter 148, 150, or 150A and who assumes responsibility for administering all medical services performed by the program, either by performing them directly or by delegating specific responsibility to authorized program physicians and health care professionals functioning under the medical director's direct supervision.

"Medication unit" means a facility established as part of, but geographically separate from, an opioid treatment program from which licensed private practitioners or community pharmacists dispense or administer opioid agonist treatment medications or collect samples for drug testing or analysis.

"Opiate addiction" means a cluster of cognitive, behavioral, and physiological symptoms in which the individual continues use of opiates despite significant opiate-induced problems. Opiate dependence is characterized by an individual's repeated self-administration of opiates that usually results in opiate tolerance, withdrawal symptoms, and compulsive drug-taking. Dependency may occur with or without the physiological symptoms of tolerance and withdrawal.

"Opioid agonist treatment medication" means any opioid agonist drug that is approved by the Food and Drug Administration under Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opiate addiction.

"Opioid drug" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

"Opioid treatment" means the dispensing of an opioid agonist treatment medication, along with a comprehensive range of medical and rehabilitative services, when clinically necessary, to an individual to alleviate the adverse medical, psychological, or physical effects incident to opiate addiction. This term encompasses detoxification treatment, short-term detoxification treatment, long-term detoxification treatment, maintenance treatment, comprehensive maintenance treatment, and interim maintenance treatment.

"Opioid treatment program" or *"OTP"* means a program or practitioner engaged in opioid treatment or interim maintenance treatment.

"Patient" or *"client/patient"* means any individual who undergoes treatment in an opioid treatment program.

"Program sponsor" means the person responsible for the operation of the opioid treatment program and who assumes responsibility for all its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program or any of its medication units. The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director.

"Short-term detoxification treatment" means detoxification treatment for a period not in excess of 30 days.

"State authority" means the Iowa department of public health, division of behavioral health, which regulates the treatment of opiate addiction with opioid drugs.

"Treatment plan" means a plan that outlines for each patient attainable short-term treatment goals that are mutually acceptable to the patient and the opioid treatment program and that specifies the services to be provided and the frequency and schedule for their provision.

155.35(2) *Required approvals.* All opioid treatment programs shall be licensed or approved by the board and shall maintain all other approvals required by the Drug Enforcement Administration,

Substance Abuse and Mental Health Services Administration and the Iowa board of pharmacy examiners in order to provide services.

155.35(3) *Central registry system.* To prevent simultaneous enrollment of a client/patient in more than one program, all opioid treatment programs shall participate in a central registry as established by the division.

Prior to admission of an applicant to an opioid treatment program, the program shall submit to the registry the applicant's name, birth date, and date of intended admission, and any other information required for the clearance procedure. No person shall be admitted to a program who is found by the registry to be participating in another such program. All opioid treatment programs shall report all admissions, discharges, and transfers to the registry immediately. All information reported to the registry from the programs and all information reported to the programs from the registry shall be treated as confidential in accordance with HIPAA and "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, effective June 9, 1987.

a. *Definitions.* For purposes of this subrule:

"Central registry" means the system through which the Iowa department of public health, division of behavioral health, obtains client/patient identifying information about individuals applying for maintenance or detoxification treatment for the purpose of preventing an individual's concurrent enrollment in more than one such program.

"Opioid treatment program" means a detoxification or maintenance treatment program which is required to report client/patient identifying information to the central registry and which is located in the state.

b. *Restrictions on disclosure.* A program may disclose client/patient identifying information to a central registry for the purpose of preventing multiple enrollment of a client/patient only if:

(1) The disclosure is made when:

1. The client/patient is admitted for treatment; or
2. The treatment is interrupted, resumed or terminated.

(2) The disclosure is limited to:

1. Client/patient identifying information; and
2. Relevant dates of admission.

(3) The program shall inform the client/patient of the required disclosure prior to admission.

c. *Use of information limited to prevention of multiple enrollments.* Any information disclosed to the central registry to prevent multiple enrollments may not be redisclosed by the registry or such information used for any other purpose than the prevention of multiple enrollments unless so authorized by court order in accordance with HIPAA and 42 CFR Part 2, effective June 9, 1987.

d. *Permitted disclosure by the central registry to prevent a multiple enrollment.* If a program petitions the central registry, and an identified client/patient is enrolled in another program, the registry may disclose:

(1) The name, address, and telephone number of the program in which the client/patient is currently enrolled to the inquiring program; and

(2) The name, address, and telephone number of the inquiring program to the program in which the client/patient is currently enrolled. The programs may communicate as necessary to verify that no error has been made and to prevent or eliminate any multiple enrollment.

155.35(4) *Admission requirements.*

a. Prior to or at the time of a client/patient's admission to an opioid treatment program, the program shall conduct a comprehensive assessment so as to determine appropriateness for admission.

b. The program shall verify, to the extent possible, the client/patient's name, address, and date of birth.

c. The program physician shall determine and document in the client/patient's record that the client/patient is physiologically dependent on narcotic substances and has been so dependent for at least one year prior to admission. A one-year history of addiction means that the client/patient was physiologically dependent on a narcotic at a time one year before admission to a program and was addicted for most of the year preceding admission.

(1) When physiological addiction cannot be clearly documented, the program physician or an appropriately trained staff member designated and supervised by the physician shall record in the client/patient's record the criteria used to determine the client/patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate the physician's agreement with the evaluation. The program physician shall make the final determination concerning a client/patient's physiologic dependence and history of addiction. The program physician also shall sign, date, and record a statement that the physician has reviewed all the documented evidence to support a one-year history of addiction and the current physiologic dependence and that in the physician's reasonable clinical judgment the client/patient fulfills the requirements for admission to maintenance treatment. Before the program administers any medication to the client/patient, the program physician shall complete and record the statement documenting addiction and current physiologic dependence.

(2) When a client/patient has voluntarily left an opioid treatment program in good standing and seeks readmission within two years of discharge, the program shall document the following information:

1. Prior opioid treatment of six months or more; and

2. The program physician shall enter in the client/patient's record that in the physician's medical judgment treatment is warranted.

d. The program shall collect a drug screening sample for analysis. Where dependence is substantially verified through other indicators, a negative drug screen will not necessarily preclude admission to the program.

e. Prior to admission, the program shall confirm with the central registry that the client/patient is not currently enrolled in another opioid treatment program.

f. If a potential client/patient has previously been enrolled in another program, the admitting program shall request from the previous program a copy of the client/patient's assessment data, treatment plan, and discharge summary including the type of or reason for discharge. All programs subject to these rules shall promptly respond to such a request upon receipt of a valid release of information.

g. A person under the age of 18 is required to have had two documented attempts at short-term detoxification or drug-free treatment to be eligible for maintenance treatment. A one-week waiting period is required after such a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the client/patient's record that the client/patient continues to be, or is again, physiologically dependent on narcotic drugs.

h. Program staff shall ensure that a client/patient is voluntarily participating in the program, and the client/patient shall sign a Consent to Treatment Form.

i. Pregnant client/patients may be admitted to opioid treatment with the following provisions:

(1) Evidence of current physiological dependency is not needed if the program physician certifies the pregnancy and, in the physician's reasonable judgment, finds treatment to be justified. Documentation of all findings and justifications for admission shall be documented in the client/patient's record by the program physician prior to the initial dose of methadone.

(2) Pregnant client/patients shall be offered comprehensive prenatal care. If the program cannot provide prenatal services, the program shall assist the client/patient in obtaining such services and shall coordinate ongoing care with the collateral provider.

(3) The program physician shall document that the client/patient has been informed of the possible risks to the unborn child from the use of medication and the risks of continued use of illicit substances.

(4) Should a program have a waiting list for admission to the program, pregnant client/patients shall be given priority.

155.35(5) *Placement, admission and assessment.* The program shall have written criteria for considering an individual for placement and admission. In addition, the program shall maintain current procedures to ensure that patients are admitted to maintenance treatment by qualified staff who have determined by using accepted medical criteria such as those outlined in the Diagnostic and Statistical Manual for Mental Disorders (DSM IV) that the person is currently addicted to an opioid drug.

a. The program shall have written policies and procedures governing a uniform process that defines:

(1) The types of information to be gathered on all individuals upon admission;

(2) Procedures to be followed when accepting referrals from outside agencies or organizations;

(3) The types of records to be kept on all individuals applying for services.

b. The client/patient assessment (psychosocial history) shall be an analysis and synthesis of the client/patient's status, and shall address the client/patient's strengths, problems, and areas of clinical concern.

It shall be developed within the period of time between admission and the first review date specified for that particular level of care within the continued stay review process. This initial assessment upon admission to treatment services is an expansion of information on the six categories contained within the placement screening document.

c. When an individual refuses to divulge information or to follow the recommended course of treatment, this refusal shall be noted in the case record.

d. At the time of admission, documentation shall be made that the individual has been informed of:

(1) General nature and goals of the program;

(2) Rules governing client/patient conduct and infractions that can lead to disciplinary action or discharge from the program;

(3) The hours during which the services are available;

(4) Treatment costs, if any, to be borne by the client/patient;

(5) Client/patient rights and responsibilities;

(6) Confidentiality laws, rules and regulations; and

(7) Information on preventing exposure to and transmission of human immunodeficiency virus.

e. Sufficient information shall be collected during the admission process so that the assessment process allows for the development of a complete assessment of the client/patient's status and a comprehensive plan of treatment can be developed.

f. The results of the screening and admission process shall be clearly explained to the client/patient, and to the client/patient's family when appropriate. This shall be documented in the client/patient record.

g. The program physician or designee, who is a qualified medical professional, shall complete a medical evaluation and a current psychological/mental status evaluation of the client/patient prior to the administration of the initial dose of medication. If the history and current psychological/mental status evaluation is completed by an individual other than the program physician, the program shall document in the client/patient's case record that this information was reviewed by the program physician prior to the initial dosage of medication. The medical evaluation shall include but not be limited to:

(1) A complete medical history;

(2) An assessment of the client/patient's current psychological and mental status;

(3) A physical examination including examination for:

1. Pulmonary, liver, or cardiac abnormalities;
2. Infectious disease; and
3. Dermatologic sequela of addiction.

(4) Laboratory tests including:

1. Serological test for syphilis; and
2. Urine screening for drugs.

(5) Intradermal PPD (tuberculosis skin test) and review of tetanus immunization status; and

(6) When indicated, an EKG, chest X-ray, pap smear, pregnancy test, sickle cell screening, complete blood count and white cell differential, multiphasic chemistry profile, routine and microscopic urinalysis, or other tests indicated by the client/patient's condition.

155.35(6) *Treatment plans.* Based upon the initial assessment, an individualized written treatment plan shall be developed and recorded in the client/patient's case record.

a. A treatment plan shall be developed and shall delineate the client/patient's immediate needs and actions required to meet these needs.

b. The treatment plan shall be developed as soon after the client/patient's admission as is clinically feasible, but no later than 30 days following admission to an outpatient opioid maintenance treatment program.

c. The individualized treatment plan shall minimally contain:

(1) A clear and concise statement of client/patient's current strengths and needs;

(2) Clear and concise statements of the short- and long-term goals the client/patient will be attempting to achieve;

(3) Type and frequency of therapeutic activities in which the client/patient will be participating;

(4) The staff person(s) to be responsible for the client/patient's treatment; and

(5) The specific criteria to be met for successful completion of treatment.

d. Treatment plans shall be developed in partnership with the client/patient. Comprehensive treatment plans shall be reviewed by the primary counselor and the client/patient as often as necessary, but no less than every 90 days during the first year and semiannually each subsequent year for opioid treatment modalities. Treatment plans shall be reviewed by the program physician on an annual basis.

e. The reviews shall consist of a reassessment of the client/patient's current status to include accomplishments and needs and a redefining of treatment goals when appropriate. The date of the review and any change, as well as the individuals involved in the review, shall also be recorded.

f. The use of abstract terms, jargon, or slang should be avoided in the treatment plan, and the plan should be written in a manner readily understandable to the average client/patient. The program shall provide the client/patient with copies of all treatment plans upon request.

g. Treatment plans shall be culturally and environmentally specific so as to meet the needs of the client/patient. Treatment plans shall be written in a manner readily understandable to the average person or with assistance available to illiterate, handicapped, or mentally impaired client/patients.

155.35(7) *Progress notes.* A client/patient's progress and current status in meeting the goals set in the treatment plan, as well as efforts by staff members to help the client/patient achieve these stated goals, shall be recorded in the client/patient's case record. Such information will be noted following each individual counseling session. Group therapy progress notes shall be recorded following each session or summarized at least weekly.

a. Entries shall be filed in chronological order and shall include the date services were provided or observations made, the date the entry was made, the signature or initials and staff title of the individual rendering the services. All progress notes shall be entered into the client/patient case record in permanent pen, typewriter, or by computer.

b. All entries that involve subjective interpretations of a client/patient's progress should be supplemented with a description of the actual behavioral observations which were the basis for the interpretation.

c. The use of abstract terms, jargon, or slang should be avoided in progress notes.

d. If a client/patient is receiving services from an outside resource, the program shall attempt to secure a written copy of status reports and other client/patient records from that resource.

e. The program shall develop a uniform progress notes format to be used by all clinical staff.

155.35(8) *Rehabilitative services.* The program shall have policies and procedures on the minimum attendance for rehabilitative services relative to the client/patient's progress and length of involvement in treatment. The minimum frequency of rehabilitative services shall occur at the same frequency of on-site dosing for client/patients receiving more than two take-home dosages a week in the first year. The minimum frequency for rehabilitative services for client/patients receiving two or fewer take-home dosages shall be weekly. The program shall provide rehabilitative services that are appropriate for the client/patient based on needs identified during the assessment process. The program may provide rehabilitative services through collateral agreements with other service providers. A client/patient who does not comply with the program's rehabilitative service requirements shall be placed on a period of probation as defined by the program, or be required to immediately increase the frequency of clinic attendance for medication and rehabilitative services. If, during a period of probation, the client/patient continues to be in noncompliance with rehabilitation services, the program shall continue to increase the attendance requirement until daily attendance is obtained or the client/patient complies with rehabilitative

services. This requirement shall not preclude the program's ability to determine that discharge of a client/patient is warranted for therapeutic reasons or program needs.

155.35(9) *Medication dispensing.*

a. The program physician shall determine the client/patient's initial and subsequent dose of medication and clinic dosing schedule and shall assume responsibility for the amount of the narcotic drug administered or dispensed and shall record, date, and sign in each client/patient's case record each change in the dosage schedule. The physician shall directly communicate orders to the pharmacy or registered or licensed personnel supervising medication dispensing. The program physician may communicate such orders verbally; however, orders shall be reduced in writing and countersigned within 72 hours by the program physician.

b. The initial dose of medication shall not exceed 30 milligrams, and the total dose for the first day shall not exceed 40 milligrams, unless the program physician documents in the client/patient's case record that 40 milligrams did not suppress opiate abstinence symptoms. A client/patient transferring into the program or on a guest-dosing status may receive an initial dosage of no more than the last daily dosage authorized by the former or primary program.

(1) Medication shall be administered by a professional authorized by law.

(2) No medication shall be administered unless the client/patient has completed admission procedures, unless the client/patient enters the program on a weekend and the central registry cannot be contacted. If, in the clinical judgment of the program physician, a client/patient is experiencing an emergency situation, the admission procedures may be completed on the following workday.

c. Administration.

(1) Take-home medication shall be labeled in accordance with state and federal law and have childproof caps.

(2) A dispensing log shall be kept in the dispensing area and in the client/patient case records which shall document the amount of medication dispensed and include the signature of the staff member authorized to dispense the medication. No dose shall be dispensed until the client/patient has been positively identified and the dosage amount is compared with the currently ordered and documented dosage level.

(3) Ingestion shall be observed and verified by the staff person authorized to dispense the medication.

(4) The program physician shall record, date, and sign in each client/patient's case record each change in the dosage schedule. Daily dosages of medications in excess of 100 milligrams shall be dispensed only with the approval of the program physician and shall be documented and justified in the client/patient's case record.

155.35(10) *Take-home or unsupervised medication use.*

a. Take-home medication may be given to client/patients who demonstrate a need for a more flexible schedule in order to enhance and continue rehabilitative progress. For client/patients receiving take-home medication, the program shall document the following requirements:

(1) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(2) Regular attendance at the clinic;

(3) Attendance at a licensed or approved treatment program for rehabilitative services (e.g., programs are considered approved when licensed or approved in accordance with Iowa Code chapter 125);

(4) Absence of recent criminal activity;

(5) Stable home environment and social relationships;

(6) Active employment or participation in school, or similar responsible activities related to employment, education or vocation; and

(7) Assurance that medication can be safely transported and stored by the client/patient for the client/patient's own use.

b. Prior to granting take-home privileges, the program physician shall document in the client/patient's case record that all the above criteria have been considered and that, in the physician's

professional judgment, the risk of diversion or abuse is outweighed by the rehabilitative benefits to be derived.

c. If the client/patient meets the above criteria, the client/patient may receive take-home medication according to the following guidelines:

(1) During the first 90 days of treatment, the take-home supply is limited to a single dose each week;

(2) During the second 90 days of treatment, the take-home supply is limited to two doses per week;

(3) In the remaining months of the first year, a patient may be given a maximum six-day supply of take-home medication;

(4) After one year of continuous treatment, a patient may be given a maximum two-week supply of take-home medication;

(5) After two years of continuous treatment, a patient may be given a maximum one-month supply of take-home medication; and

(6) Take-home medication shall not be dispensed to patients in interim maintenance treatment or detoxification.

d. If a client/patient is unable to conform to the applicable mandatory schedule, a revised schedule may be permitted provided the program receives an exception to these rules from the division and SAMHSA, when applicable. A copy of the written exception shall be placed in the client/patient's case record. The division will consider exceptions only in unusual circumstances. When a program is applying for less frequent pickups for client/patients, approval will be based on considerations in addition to distance when another program exists within 25 miles of the client/patient's residence.

e. Should a patient receiving take-home medication provide a drug screen that is confirmed either positive for substances or negative for the prescribed medication, the program shall ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(1) The program physician shall place the client/patient on three months' probation, as defined by the program, or increase the client/patient's frequency of clinic dosing after considering the client/patient's overall progress and length of involvement in the program.

(2) Should the client/patient provide a drug screen that is positive for substances or negative for medication during a period of probation, the program physician shall increase the client/patient's frequency of clinic attendance for dosage pickup for at least three months. If after the three-month period the client/patient meets the eligibility criteria, the client/patient may return to the previous take-home schedule.

f. Take-home or unsupervised dosages of medication in excess of 100 milligrams may be dispensed by the program physician when the need for those dosages is carefully reviewed and considered and justified in the client/patient's case record based on the physician's clinical judgment.

155.35(11) *Drug testing.* Each program shall establish policies and procedures for the collection of drug-screening specimens and utilization of results.

a. The program shall ensure that an initial drug-screening test or analysis is completed for each prospective client/patient and that at least eight additional random tests or analyses are performed on each client/patient during the first year in maintenance treatment and that at least quarterly random tests or analyses are performed on each client/patient in maintenance treatment for each subsequent year. When a sample is collected from each client/patient for such a test or analysis, it shall be done in a manner that minimizes opportunity for falsification. Each test or analysis shall be analyzed for opiates, methadone, amphetamines, cocaine, and barbiturates. In addition, if any other drug or drugs have been determined by a program to be abused in that program's locality, or as otherwise indicated, each test or analysis must be analyzed for any of those drugs as well. Any laboratory that performs the testing required under this rule shall be in compliance with all applicable federal proficiency testing and licensing standards and all applicable state standards.

b. The program shall ensure that test results are not used as the sole criterion to force a client/patient out of treatment but are used as a guide to change treatment approaches. The program shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

155.35(12) *Client/patient case records.* The program shall have written policies and procedures governing the compilation, storage and dissemination of individual client/patient case records.

a. These policies and procedures shall ensure that:

(1) The program exercises its responsibility for safeguarding and protecting the client/patient case records against loss, tampering, or unauthorized disclosure of information;

(2) Content and format of client/patient case records are kept uniform; and

(3) Entries in the client/patient case record are signed and dated.

b. The program shall provide adequate physical facilities for the storage, processing, and handling of client/patient case records. These facilities shall include suitably locked, secured rooms or file cabinets.

c. Appropriate records shall be readily accessible to those staff members providing services directly to the client/patient and other individuals specifically authorized by program policy. Records should be kept in proximity to the area in which the client/patient normally receives services.

d. The program shall have a written policy governing the disposal and maintenance of client/patient case records. Client/patient case records shall be maintained for not less than seven years from the date they are officially closed.

e. Confidentiality of alcohol and drug abuse client/patient case records. The confidentiality of alcohol and drug abuse client/patient case records maintained by a program is protected by HIPAA and the "Confidentiality of Alcohol and Drug Abuse Patient Records" regulations, 42 CFR Part 2, effective June 9, 1987, which implement federal statutory provisions, 42 U.S.C. 290dd-3 applicable to alcohol abuse client/patient records, and 42 U.S.C. 290ee-3 applicable to drug abuse client/patient records. The program is precluded from identifying that a client/patient attends the program or disclosing any information identifying a client/patient as an alcohol or drug abuser unless:

(1) The client/patient consents in writing;

(2) The disclosure is allowed by a court order;

(3) The disclosure is made to medical personnel in a medical emergency; or

(4) The disclosure is required by law.

f. Confidentiality and transfer of records. Upon receipt of a properly executed written release of information signed by the client/patient, the program shall release client/patient records in a timely manner. A program shall not refuse to transfer or release client/patient records related to continuation of care solely because payment has not been received. A program may refuse to release client/patient records which are unrelated to continuation of care if payment has not been received. A program may refuse to file the reporting form required by 641—subrule 157.3(1), "Notice Iowa Code 321J—Confidential Medical Record," reporting screening, evaluation, and treatment completion, if payment has not been received for such services.

155.35(13) *Diversion prevention plan.*

a. The program shall develop a diversion identification and prevention plan that:

(1) Outlines methods by which the program shall detect possible diversion of take-home medication; and

(2) Actions to be taken when diversion is identified or suspected.

b. The program shall establish and implement proactive procedures to reduce the likelihood or possibility of diversion.

155.35(14) *Quality improvement.* The program shall have an ongoing quality improvement process designed to objectively and systematically monitor and evaluate the quality and appropriateness of client/patient care, pursue opportunities to improve client/patient care, and resolve identified problems. Quality improvement efforts shall be facilitywide in scope and include review of clinical and professional services.

a. The program shall have a written plan for a quality improvement process. The written plan shall describe the objectives, organization, scope, and mechanisms for overseeing the effectiveness of monitoring, evaluation, and problem-solving activities.

b. The program shall establish written policies and procedures to describe and document the quality improvement process, including the monitoring and evaluation activities of the program. The policies and procedures shall ensure that:

(1) Information is collected or screened by a designated individual, individuals, or committee. Quality improvement activities may be contracted through all outside resources;

(2) Objective criteria are utilized in the development and application of criteria relating to the care or service the program provides; and

(3) Objective criteria are utilized in the evaluation of the information collected in order to identify important problems in, or opportunities to improve, client/patient care and clinical performance.

c. The program shall document that the quality of client/patient care is improved and identified problems are resolved through appropriate actions taken by the program's administrative and supervisory staff and through professional staff functions.

d. Necessary information shall be communicated among program components, modalities, or services when problems or opportunities to improve client/patient care involve more than one program component or service.

e. The program shall ensure that the status of identified problems is tracked to ensure improvement or resolution.

f. The program shall ensure that information from program components or services and the findings of discrete quality improvement activities are used to detect trends, patterns of performance, and potential problems that affect more than one program component or service.

g. The objectives, scope, organization, and effectiveness of the quality improvement process are evaluated at least annually and revised as necessary.

155.35(15) *Interim maintenance treatment.*

a. An approved program may offer interim maintenance treatment when, due to capacity, the program cannot place the client/patient in a program offering comprehensive services within 14 days of the client/patient's application for admission.

b. An approved program may provide interim maintenance treatment only if the program also provides comprehensive maintenance treatment to which interim maintenance treatment client/patients may be transferred.

c. Interim maintenance treatment program approval. Before a public or nonprofit private narcotic treatment program may provide interim maintenance treatment, the program must receive approval of both the U.S. Food and Drug Administration and the division of behavioral health and:

(1) The program director must certify that the program seeking such authorization is unable to place client/patients in a public or private nonprofit program within a reasonable geographic area within 14 days of the client/patient's application for admission; and

(2) That interim maintenance treatment will not reduce the capacity of the program's comprehensive maintenance treatment.

(3) Client/patients admitted to interim maintenance treatment shall be transferred to comprehensive maintenance treatment within 120 days of admission.

d. Minimum standards for interim maintenance treatment. The program may admit a client/patient who is eligible for comprehensive maintenance treatment to interim maintenance treatment if the client/patient cannot be placed in a public or private nonprofit comprehensive program within a reasonable geographic area and within 14 days of application for services. An initial drug screen, and at least two others, shall be taken from the client/patient during the maximum admission period of 120 days. A program shall establish and follow reasonable criteria for determining the transfer of client/patients to comprehensive maintenance treatment. These transfer criteria shall be in writing, available for inspection, and shall include at a minimum a preference for the transfer of pregnant client/patients. Interim maintenance shall be conducted in accordance with all applicable federal regulations and state rules. The program shall notify the division when a client/patient begins interim treatment; when a client/patient leaves interim treatment, and when a client/patient transfers to comprehensive maintenance treatment. Such notifications shall be documented by the program in

the client/patient's case record. All requirements for comprehensive maintenance treatment apply to interim maintenance treatment with the following exceptions:

(1) The medication is required to be administered daily under observation;

(2) Take-home medication is not allowed;

(3) Initial and comprehensive treatment plans are not required;

(4) A primary counselor is not required to be assigned to the client/patient; and

(5) Interim maintenance cannot be provided for longer than 120 days in any 12-month period.

155.35(16) *Complaints, investigations, suspension and revocation.* The rules relating to complaints, investigations, suspension and revocation as outlined in 641—155.11(125,135) through 641—155.16(125,135) shall apply to opioid treatment programs.

155.35(17) *Deemed status.* The board shall grant deemed status to programs accredited either by a recognized national or not-for-profit accreditation body when the board determines that the accreditation is for the same services.

a. National accreditation bodies. The national accreditation bodies currently recognized as meeting board criteria for possible deemed status are:

(1) Joint Commission.

(2) Council on Accreditation of Rehabilitation Facilities (CARF).

(3) Council on Accreditation of Children and Family Services (COA).

(4) American Osteopathic Association (AOA).

b. Credentials and expectations of accreditation bodies.

(1) The accreditation credentials of the bodies shall specify the types of organizations, programs, and services the bodies accredit and targeted population groups, if appropriate.

(2) Deemed status means that the board and division shall recognize, in lieu of their own review, an outside body's review, assessment and accreditation of a hospital-based or freestanding community-based substance abuse program's operations, functioning, and services that correspond to those described in this chapter.

c. Responsibilities of programs granted deemed status.

(1) When a program receives accreditation and is then granted licensure through deemed status, the program shall continue to be responsible for meeting all requirements in accordance with this chapter and all applicable laws and regulations.

(2) If a program that is nationally accredited requests deemed status for services not covered by the national accreditation body's standards, but covered by this chapter, the licensing for those services shall be conducted by the division.

(3) Copies of the entire CARF, Joint Commission, COA or AOA behavioral health accreditation survey/inspection report and certificate of accreditation shall be submitted to the division with the application for deemed status provided by the division.

(4) The program shall submit to the division accreditation corrective plans or written conditions to accreditation.

(5) The program shall be currently accredited by a board-approved national accreditation body for services that are outlined in this chapter.

(6) The program shall advise the division of any changes in the program's accreditation status, address, executive director/CEO, facility locations, or any other changes to the program/organization within 30 days of such changes.

(7) All survey reports for the hospital-based or freestanding community-based substance abuse treatment program from the accrediting or licensing body shall be sent to the division.

(8) For a program granted deemed status, the period of deemed status shall coincide with the period of time that program is awarded accreditation by the national accreditation body. However, under no circumstances shall it be longer than three years.

d. The board and division shall retain the following responsibilities and rights when deemed status is granted to program/organizations:

(1) The division may conduct focused or general on-site follow-up visits as determined appropriate.

(2) The division shall investigate all complaints that are under the authority of this chapter and recommend and require corrective action or other sanctions in accordance with 641—155.16(125,135). All complaints, findings and required corrective action may be reported to the accreditation body.

(3) The board shall review and act upon deemed status if necessary when complaints have been founded, when national accreditation bodies find instances of noncompliance with accreditation, when the accreditation status of the program expires without renewal, when the program's accreditation status is downgraded or withdrawn by the accreditation body, or when focused reviews find instances of noncompliance.

e. Continuation of deemed status. The program shall submit a copy of all CARF, Joint Commission, COA or AOA behavioral health accreditation survey reports to the division.

155.35(18) *Personnel qualifications.*

a. Personnel providing screening, evaluations, assessments or treatment in accordance with this chapter shall meet the requirements of 155.21(8)*"i."*

b. Personnel in opioid treatment programs shall subscribe to a code of conduct found in professional certification or licensure as specified in 155.21(8).

[**ARC 8792B**, IAB 6/2/10, effective 7/1/10]

These rules are intended to implement Iowa Code sections 125.13 and 125.21 and 2009 Iowa Code Supplement section 135.150.

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[1] Effective date of Ch 3 delayed by the Administrative Rules Review Committee 70 days from 8/2/78. Delay suspended by the Administrative Rules Review Committee at their meeting held on 9/11/78.

[2] Effective date of 643—3.35(125) delayed 70 days by the Administrative Rules Review Committee at its meeting held April 11, 1994; on June 15, 1994, the Committee voted to delay the rule until adjournment of the 1995 General Assembly.

CHAPTER 157
STANDARDS FOR SUBSTANCE ABUSE TREATMENT AND ASSESSMENT PROGRAMS AND THE OPERATING A MOTOR VEHICLE WHILE INTOXICATED (OWI) LAW

[Prior to 3/29/06, see 643—Ch 8]

641—157.1(125) Definitions. Unless otherwise indicated, the following definitions shall apply to the specific terms used in these rules:

"Assessment" means the ongoing process of identifying a diagnosis, ruling out other diagnoses, and determining the level of care needed by the client.

"Course for drinking drivers" means an approved course designed to inform the offender about drinking and driving and to encourage the offender to assess the offender's own drinking and driving behavior in order to select practical alternatives. Enrollment in the course is not limited to persons ordered to enroll, attend, and successfully complete the course required under Iowa Code sections 321J.1 and 321J.17. However, any person under the age of 18 who is required to attend the course for violation of Iowa Code section 321J.2 or 321J.17 must attend a course offered by a substance abuse treatment program licensed under Iowa Code chapter 125. Any instructional course for drinking drivers shall be approved by the department of education in consultation with the community colleges and substance abuse treatment programs licensed under Iowa Code chapter 125 and using the course of instruction detailed in 281—21.31(321J).

"Department" means the Iowa department of public health.

"Evaluation" means the process to evaluate the client's strengths, weaknesses, problems, and needs for the purpose of defining a course of treatment. This includes use of a standardized placement screening and any additional patient/client profile information, and recommendation to an appropriate level of care.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996.

"Licensed" means issuance of a license by the department and the state board of health, which validates the licensee's compliance with substance abuse program standards and authorizes the licensee to operate a substance abuse program in the state of Iowa.

"Posttreatment" means continuing care after primary treatment has been completed.

"Primary treatment" means substance abuse treatment modality including inpatient, primary residential treatment, extended residential treatment, medically monitored residential, extended outpatient, intensive outpatient, and partial hospitalization.

"Program" means any individual, partnership, corporation, association, governmental subdivision or public or private organization.

"Qualifying program" means a program which has a contract with the state of Iowa or the state's contracted managed care entity to provide substance abuse treatment using a sliding fee scale.

"Satisfactory completion of the drinking drivers course" means receiving at the completion of the course a grade from the course instructor of "C" or "2.0," or better.

"Screening" means the process by which a client/patient is determined at risk and in need of further evaluation. The focus is on the minimum criteria necessary for appropriateness/eligibility.

"Substance abuser" means a person who lacks self-control as to the use of chemical substances or uses chemical substances to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted.

"Treatment" means the broad range of planned and continuing, inpatient, outpatient, residential care services, including diagnostic evaluation, counseling, medical, psychiatric, psychological, and social service care, which may be extended to substance abusers, concerned persons, concerned family members, or significant others, and which is geared toward influencing the behavior of such individuals to achieve a state of rehabilitation.

641—157.2(125) Screening, evaluation, treatment, and drinking drivers course. Persons who are charged with operating a motor vehicle while intoxicated (OWI), Iowa Code section 321J.2, and whose driver's license or nonresident operating privileges are revoked under Iowa Code chapter 321J shall

be assigned to undergo a substance abuse evaluation and, if recommended, treatment from a provider licensed by the department under Iowa Code chapter 125.

157.2(1) *Screening.* The initial screening shall consist of a generally accepted standardized substance abuse screening instrument. The program shall utilize a recognized diagnostic test or tool to determine "substance abuse" or "dependence" as those terms are defined in the DSM IV (Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition). In addition, programs shall collect information on blood alcohol content at time of arrest; history of other alcohol or drug-related arrests; history of alcohol/drug treatment; history of mental health problems and treatment; any OWI arrest that included personal injury or additional charge(s); and family history of substance abuse.

157.2(2) *Evaluation.* If the initial screening shows a potential for chemical dependency, then a further evaluation will be completed. This evaluation shall consist of further development of the six assessment dimensions outlined in the American Society of Addiction Medicine, Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-Revised.

157.2(3) *Treatment.* Treatment shall consist of a broad range of planned and continuing, inpatient, outpatient, and residential care services, including ongoing diagnostic evaluation, counseling, and medical, psychiatric, psychological, and social service care geared toward influencing the behavior of such individuals to achieve a state of rehabilitation. Individuals will be placed in the appropriate level of care at a substance abuse treatment program licensed by the department under Iowa Code chapter 125 in accordance with the American Society of Addiction Medicine, Patient Placement Criteria for the Treatment of Substance-Related Disorders, Second Edition-Revised.

157.2(4) *Drinking drivers course.* Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course if the course curriculum is approved by the department of education under Iowa Code section 321J.22 and 281—21.31(321J).

641—157.3(125) Screening, evaluation, treatment, and drinking drivers course completion. The program shall report substance abuse screening, assessment, evaluation and treatment completion to the department of transportation and to the district court in accordance with Iowa Code sections 125.37, 125.84 and 125.86; the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987; HIPAA; and other relevant provisions of federal and state law. The program shall report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and 281—21.31(321J); the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987; HIPAA; and other relevant provisions of federal and state law.

157.3(1) *Reporting form.* Programs shall report screening, evaluation, and treatment completion utilizing the form "Notice Iowa Code 321J—Confidential Medical Record." Iowa substance abuse evaluation and treatment providers licensed by the department under Iowa Code chapter 125 shall submit this form online to the department of transportation using the department of transportation's 321J Web site, htpps://www.saeval.dot.state.ia.us.

157.3(2) *Primary treatment.* Upon completion of primary treatment, programs shall report to the department of transportation and the courts that treatment has been completed in accordance with Iowa Code section 321J.22; the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987; HIPAA; and other relevant provisions of federal and state law.

157.3(3) *Posttreatment results.* If the court orders a posttreatment program, the program shall report progress and attendance to the person's probation officer or otherwise as ordered by the court in accordance with Iowa Code section 321J.22; the federal confidentiality regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2, effective June 9, 1987; HIPAA; and other relevant provisions of federal and state law.

157.3(4) *Drinking drivers course.* Substance abuse treatment programs licensed by the department under Iowa Code chapter 125 may provide the drinking drivers course and shall report satisfactory completion of the drinking drivers course to the department of education in accordance with Iowa Code section 321J.22 and 281—21.31(321J).

641—157.4(125) Cost of evaluation and treatment.

157.4(1) *Screening and evaluation.* The program shall charge no more than $125 for the cost of screening and evaluation. The individual or the individual's insurance provider shall be responsible for the costs of the screening and evaluation.

157.4(2) *Treatment.* Qualifying programs shall consider a person admitted to the program pursuant to Iowa Code section 321J.3 who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part to be a state patient and eligible for state-funded treatment as provided in Iowa Code section 125.44. Qualifying programs shall utilize a sliding fee schedule approved by the department to determine cost of treatment. There is no prohibition on any individual from paying in whole the cost of treatment.

157.4(3) *Reimbursement.* Programs shall be able to seek reimbursement of the cost of screening, evaluation and treatment from an individual's insurance company, firm or corporation bound to pay, or from Medicaid for an individual who is eligible or enrolled in Medicaid.

641—157.5(125) Timeliness. The program shall conduct and complete substance abuse evaluations and treatment at the program's earliest convenience.

641—157.6(125) Confidentiality. Programs will abide by the federal regulations, "Confidentiality of Alcohol and Drug Abuse Patient Records," 42 CFR, Part 2; Iowa Code section 125.37; HIPAA; and other relevant provisions of federal and state law.

641—157.7(125) Records.

157.7(1) Programs shall maintain records for a minimum of seven years after discharge or completion of screening, evaluation, or treatment, and then destroy or maintain the records based on the program's written policy and procedure.

157.7(2) Upon receipt of a properly executed written release of information signed by the client/patient, the program shall release client/patient records in a timely manner.

a. A program shall not refuse to transfer or release client/patient records related to continuation of care solely because payment has not been received.

b. A program may refuse to release client/patient records which are unrelated to continuation of care if payment has not been received.

c. A program may refuse to file the reporting form required by subrule 157.3(1), "Notice Iowa Code 321J—Confidential Medical Record," reporting screening, evaluation, and treatment completion, if payment has not been received for such services.

[**ARC 8796B**, IAB 6/2/10, effective 7/7/10]

641—157.8(125) Reciprocity. For a resident of a state other than Iowa or an Iowa resident obtaining evaluation or treatment outside the state, screening, evaluation or treatment services shall be provided by programs licensed or approved by that state's substance abuse authority. Programs shall submit the results of the screening, evaluation and treatment to the Iowa department of public health, division of behavioral health and professional licensure, for review and reporting purposes to the Iowa department of transportation.

These rules are intended to implement Iowa Code section 125.13.

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CHAPTERS 159 to 161
Reserved

CHAPTER 162
LICENSURE STANDARDS FOR PROBLEM GAMBLING TREATMENT PROGRAMS
[Prior to 7/3/96, see Human Services Department, 441—Ch 162]
Rescinded IAB 6/2/10, effective 7/1/10

CHAPTERS 163 to 169
Reserved

CHAPTER 191
ADVISORY BODIES OF THE DEPARTMENT

641—191.1(135) Definitions. For the purpose of these rules, the following definitions shall apply:

"Advisory body" means a council, committee, or task force whose members have been appointed by the governor, the director or the director's designee to provide advice or technical assistance to the department in an identified area of public health. An advisory body has no substantive authority to affect individual rights, duties or responsibilities.

"Chairperson" means the chair of the advisory body who has been elected by the majority of the advisory body's members.

"Department" means the Iowa department of public health.

"Designee" means the individual designated by the director.

"Director" means the director of public health.

"Governor" means the governor of Iowa.

641—191.2(135) Purpose. The department may from time to time establish an advisory body for the provision of advice or technical assistance in an identified area of public health. These rules are applicable only to an advisory body established for a period to exceed one year or more. These rules do not apply to an advisory body governed by other administrative rule or statute.

641—191.3(135) Appointment. Members of the advisory body shall be appointed by the governor, director, or designee. The appointments, unless provided otherwise by law, shall be for three-year staggered terms which shall expire on June 30.

191.3(1) Vacancies shall be filled in the same manner in which the original appointments were made for the balance of the unexpired term.

191.3(2) Absences. Three consecutive unexcused absences shall be grounds for the director to consider dismissal of the advisory body member and to appoint another. The chairperson of the advisory body is charged with providing notification of absences to the department.

[**ARC 8797B**, IAB 6/2/10, effective 7/7/10]

641—191.4(135) Officers.

191.4(1) Officers of the advisory body shall be a chairperson and a vice chairperson and shall be elected at the first meeting of each fiscal year unless designated at the time of appointment.

a. Vacancies in the office of chairperson shall be filled by elevation of the vice chairperson.

b. Vacancies in the office of vice chairperson shall be filled by election at the next meeting after the vacancy occurs.

191.4(2) Duties of officers.

a. The chairperson shall:

(1) Preside at all meetings of the advisory body,

(2) Appoint such subcommittees as deemed necessary, and

(3) Designate the chairperson of each subcommittee.

b. The vice chairperson shall:

(1) Perform the duties of the chairperson if the chairperson is absent or unable to act. When so acting, the vice chairperson shall have all the powers of and be subject to all restrictions upon the chairperson.

(2) Perform such other duties as may be assigned by the chairperson.

[**ARC 8797B**, IAB 6/2/10, effective 7/7/10]

641—191.5(135) Meetings.

191.5(1) The advisory body shall establish a meeting schedule on an annual basis to conduct its business.

a. Meetings may be scheduled as business requires, but notice to members must be at least five working days prior to the meeting date.

b. A four-week notice is encouraged to accommodate the schedules of professional members.

191.5(2) Robert's Rules of Order shall govern all meetings.

191.5(3) Action on any issue before the advisory body can only be taken by a majority vote of the entire membership.

191.5(4) The advisory body shall maintain information sufficient to indicate the vote of each member present.

[**ARC 8797B**, IAB 6/2/10, effective 7/7/10]

641—191.6(135) Subcommittees. The advisory body may designate one or more subcommittees to perform such duties as may be deemed necessary.

641—191.7(135) Expenses of advisory body members. The following may be considered necessary expenses for reimbursement of advisory body members when incurred on behalf of advisory body business and are subject to established state reimbursement rates:

1. Reimbursement for travel in a private car.
2. Actual lodging and meal expenses including sales tax on lodging and meals.
3. Actual expense of public transportation.

641—191.8(135) Gender balance. All advisory bodies of the department appointed by the governor, director or designee, if not otherwise provided by law, shall be gender-balanced.

These rules are intended to implement Iowa Code section 135.11.

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CHAPTER 192
CHILD SUPPORT NONCOMPLIANCE

641—192.1(252J) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Applicant" means an individual who is seeking the issuance of a license.

"Certificate of noncompliance" means a document provided by the child support recovery unit of the department of human services certifying that the named applicant or licensee has defaulted on an obligation owed to or collected by the child support recovery unit.

"Department" means the department of public health.

"License" means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the granting of authority to engage in a profession, occupation, or business.

"Licensing authority" means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

[**ARC 8798B**, IAB 6/2/10, effective 7/7/10]

641—192.2(252J) Issuance or renewal of a license—denial. The licensing authority shall deny the issuance or renewal of a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the following shall apply.

192.2(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

192.2(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant or licensee.

192.2(3) The licensing authority's administrator is authorized to prepare and serve the notice required by Iowa Code section 252J.8, upon the applicant or licensee.

192.2(4) Applicants and licensees shall keep the licensing authority informed of all court actions, and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J, and shall provide the licensing authority copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

192.2(5) All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees before a license will be issued, renewed, or reinstated after the licensing authority has denied the issuance or renewal of a license pursuant to Iowa Code chapter 252J.

192.2(6) In the event an applicant or licensee timely files a district court action following service of a licensing authority notice pursuant to Iowa Code sections 252J.8 and 252J.9, the licensing authority shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

192.2(7) The licensing authority shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the licensing authority determines appropriate in the circumstances, within 10 days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the applicant or licensee if the license is issued or renewed following the licensing authority's receipt of a withdrawal of the certificate of noncompliance.

[**ARC 8798B**, IAB 6/2/10, effective 7/7/10]

641—192.3(252J) Suspension or revocation of a license. The licensing authority shall suspend or revoke a license upon the receipt of a certificate of noncompliance from the child support recovery unit of the department of human services according to the procedures set forth in Iowa Code chapter 252J. In addition to the procedures set forth in Iowa Code chapter 252J, the following shall apply.

192.3(1) The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

192.3(2) The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee.

192.3(3) The licensing authority's administrator is authorized to prepare and serve the notice required by Iowa Code section 252J.8 and is directed to notify the licensee that the license will be suspended unless the license is already suspended on other grounds. In the event that the license is on suspension, the administrator shall notify the licensee of the licensing authority's intention to revoke the license.

192.3(4) Licensees shall keep the licensing authority informed of all court actions, and all child support recovery unit action taken under or in connection with Iowa Code chapter 252J, and shall provide the licensing authority copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions and withdrawals of certificates of noncompliance by the child support recovery unit.

192.3(5) All licensing authority fees required for license renewal or license reinstatement must be paid by licensees before a license will be reinstated after the licensing authority has suspended or revoked a license pursuant to Iowa Code chapter 252J.

192.3(6) In the event a licensee files a district court action following service of a licensing authority notice pursuant to Iowa Code sections 252J.8 and 252J.9, the licensing authority shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed. For purposes of determining the effective date of the suspension or revocation, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

192.3(7) The licensing authority shall notify the licensee in writing through regular first-class mail, or such other means as the licensing authority determines appropriate in the circumstances, within 10 days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee if the license is reinstated following the licensing authority's receipt of a withdrawal of the certificate of noncompliance.

[**ARC 8798B**, IAB 6/2/10, effective 7/7/10]

641—192.4(17A,22,252J) Sharing of information. Notwithstanding any statutory confidentiality provision, the licensing authority may share information with the child support recovery unit of the department of human services through manual or automated means for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 252J or Iowa Code chapter 598.

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These rules are intended to implement Iowa Code chapter 252J.

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CHAPTER 193
IMPAIRED PRACTITIONER REVIEW COMMITTEE

641—193.1(272C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Committee" means the impaired practitioner review committee as established by a licensing board pursuant to the authority of Iowa Code section 272C.3(1)*"k."*

"Contract" means the written document establishing the terms for participation in the impaired practitioner program prepared by the committee.

"Impairment" means an inability to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction or any mental or physical disorder or disability.

"Licensing board" or *"board"* means "licensing board" or "board" as defined in Iowa Code section 272C.1.

"Practitioner" means a person licensed under Iowa Code chapter 105, 147, 147A, 148C, 149, 152B, 152C, 152D, 154A, 154E, or 155.

"Self-report" means the licensee's providing written or oral notification to the board that the licensee has been or may be diagnosed as having an impairment prior to the board's receiving a complaint or report alleging the same from a second party.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.2(272C) Purpose. The impaired practitioner review committee evaluates, assists, monitors and, as necessary, makes reports to the licensing board on the recovery or rehabilitation of practitioners who self-report impairments. These rules do not apply to an impaired practitioner review committee governed by other administrative rule or statute.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.3(272C) Composition of the committee. The chairperson of the board shall appoint the members of the committee. The committee shall meet as necessary in order to review licensee compliance, develop consent agreements for new referrals, and determine eligibility for continued monitoring. The membership of the committee includes, but is not limited to:

193.3(1) One practitioner, licensed under the same board or similar professional licensing board who has remained free of addiction for a period of no less than two years since successfully completing a board-approved recovery program and board-ordered probation for drug or alcohol dependency, addiction, or abuse.

193.3(2) One practitioner with expertise in substance abuse/addiction treatment programs.

193.3(3) One public member of the board.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.4(272C) Eligibility. To be eligible for participation in the impaired practitioner recovery program, a licensee must meet all of the following criteria:

193.4(1) The licensee must self-report an impairment or suspected impairment directly to the office of the board.

193.4(2) The licensee must not have engaged in the unlawful diversion or distribution of controlled substances or illegal substances.

193.4(3) At the time of the self-report, the licensee must not already be under board order for an impairment or any other violation of the laws and rules governing the practice of the profession.

193.4(4) The licensee has not caused harm or injury to a client.

193.4(5) There is currently no board investigation of the licensee that, as determined by the committee, concerns serious matters related to the ability to practice with reasonable safety and skill or in accordance with the accepted standards of care.

193.4(6) The licensee has not been subject to a civil or criminal sanction or ordered to make reparations or remuneration by a government or regulatory authority of the United States, this or any other state or territory or a foreign nation for actions that the committee determines to be serious

infractions of the laws, administrative rules, or professional ethics related to the practice of the licensee's profession.

193.4(7) The licensee has provided truthful information and fully cooperated with the board or committee.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.5(272C) Terms of participation in the impaired practitioner recovery program. A licensee shall agree to comply with the terms for participation in the impaired practitioner recovery program established in a contract. Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensee in writing.

193.5(1) *Noncompliance.* Failure to comply with the provisions of the contract shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

193.5(2) *Practice restrictions.* The committee may impose restrictions on the licensee's practice as a term of the contract until such time as the committee receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill.

a. As a condition of participating in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the contract.

b. In the event that the licensee refuses to agree to or comply with the restrictions established in the contract, the committee shall refer the licensee to the board for appropriate action.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.6(272C) Limitations. The committee establishes the terms and monitors a participant's compliance with the program specified in the contract.

193.6(1) The committee is not responsible for participants who fail to comply with the terms of or successfully complete the impaired practitioner program.

193.6(2) Participation in the program under the auspices of the committee shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the licensee's profession by a participant shall be referred to the board for appropriate action.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

641—193.7(272C) Confidentiality. The committee is subject to the provisions governing confidentiality established in Iowa Code section 272C.6.

193.7(1) Information in the possession of the board or the committee about licensees in the program shall not be disclosed to the public.

193.7(2) Participation in the impaired practitioner program under the auspices of the committee is not a matter of public record.

[**ARC 8799B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code chapter 272C.

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CHAPTER 195
STUDENT LOAN DEFAULT/NONCOMPLIANCE WITH AGREEMENT FOR PAYMENT OF OBLIGATION

641—195.1(261) General definitions. For the purposes of this chapter, the following definitions shall apply:

"Applicant" means an individual who is seeking the issuance of a license.

"Certificate of noncompliance" means written certification from the college student aid commission to the licensing authority certifying that the licensee has defaulted on an obligation owed to or collected by the commission.

"Commission" means the college student aid commission.

"Department" means the department of public health.

"License" means a license, certification, registration, permit, approval, renewal, or other similar authorization issued to a person by a licensing authority which evidences the granting of authority to engage in a profession, occupation, or business.

"Licensing authority" means a board, commission, or any other entity of the department which has authority within this state to suspend or revoke a license or deny the renewal or issuance of a license authorizing a person to engage in a business, occupation, or profession.

[**ARC 8800B**, IAB 6/2/10, effective 7/7/10]

641—195.2(261) Issuance or renewal of a license—denial. The licensing authority shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127.

195.2(1) In order to process the certificate of noncompliance received by the licensing authority, the licensing authority will maintain records of licensees by name, current known address, and social security number.

195.2(2) Upon receipt of a certificate of noncompliance duly issued by the commission, the licensing authority shall initiate procedures for denial of issuance or renewal of licensure.

195.2(3) The licensing authority shall provide notice to the licensee or applicant informing that person of the licensing authority's intent to deny the license, and said notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. The notice shall state all of the following:

a. The licensing authority intends to deny issuance or renewal of an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under this subrule, the individual's license shall be denied.

195.2(4) The applicant or licensee served with a notice under 195.2(3) shall not have a right to a hearing before the licensing authority but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of the provision of notice.

195.2(5) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the applicant or licensee.

195.2(6) The licensing authority's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the applicant or licensee.

195.2(7) All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the licensing authority has denied the issuance or renewal of a license pursuant to Iowa Code chapter 261.

195.2(8) In the event an applicant or licensee timely files a district court action following service of a licensing authority notice pursuant to Iowa Code section 261.126, the licensing authority shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed.

195.2(9) Upon the filing of a district court action, the applicant or licensee shall promptly file with the licensing authority a copy of the petition filed with the district court. In addition, the applicant or licensee shall provide the licensing authority with copies of all court orders and rulings entered in such action within seven days of the action.

195.2(10) For purposes of determining the effective date of the denial of the issuance or renewal of a license, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

[**ARC 8800B**, IAB 6/2/10, effective 7/7/10]

641—195.3(261) Suspension or revocation of a license. The licensing authority shall suspend or revoke a license upon receipt of a certificate of noncompliance from the college student aid commission according to the procedures set forth in Iowa Code sections 261.121 to 261.127. In addition to the provisions contained in those sections, the following shall apply:

195.3(1) In order to process the certificate of noncompliance received by the licensing authority, the licensing authority will maintain records of licensees by name, current known address, and social security number.

195.3(2) Upon receipt of a certificate of noncompliance duly issued by the commission, the licensing authority shall initiate procedures for suspension or revocation of licensure.

195.3(3) The licensing authority shall provide notice to the licensee informing the individual of the licensing authority's intent to suspend or revoke the license, and said notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. The notice shall state all of the following:

a. The licensing authority intends to suspend or revoke an individual's license due to the receipt of a certificate of noncompliance from the commission.

b. The individual must contact the commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the commission furnishes a withdrawal of a certificate of noncompliance to the licensing authority within 30 days of the issuance of the notice under this subrule, the individual's license shall be suspended or revoked.

195.3(4) The licensee served with a notice under 195.3(3) shall not have a right to a hearing before the licensing authority but may request a court hearing pursuant to Iowa Code section 261.127. Such court hearing must be requested within 30 days of the provision of notice.

195.3(5) The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code section 261.126, shall be 60 days following service of the notice upon the licensee.

195.3(6) The licensing authority's administrator is authorized to prepare and serve the notice required by Iowa Code section 261.126 upon the licensee.

195.3(7) All licensing authority fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the licensing authority has suspended or revoked a license pursuant to Iowa Code chapter 261.

195.3(8) In the event a licensee timely files a district court action following service of a licensing authority notice pursuant to Iowa Code section 261.126, the licensing authority shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the licensing authority to proceed.

195.3(9) Upon the filing of a district court action, the licensee shall promptly file with the licensing authority a copy of the petition filed with the district court. In addition, the licensee shall provide the licensing authority with copies of all court orders and rulings entered in such action within seven days of the action.

195.3(10) For purposes of determining the effective date of the suspension or revocation, the licensing authority shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.
[**ARC 8800B**, IAB 6/2/10, effective 7/7/10]

641—195.4(17A,22,261) Sharing of information. Notwithstanding any statutory confidentiality provision, the licensing authority may share information with the commission for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 261.
[**ARC 8800B**, IAB 6/2/10, effective 7/7/10]

These rules are intended to implement Iowa Code chapter 261.

[Filed 5/14/99, Notice 3/24/99—published 6/2/99, effective 7/7/99]
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CHAPTER 3
LICENSURE TO PRACTICE—REGISTERED NURSE/LICENSED PRACTICAL NURSE

[Prior to 5/23/84, IAC, appeared as separate Chapters 3 and 4]
[Prior to 8/26/87, Nursing Board[590] Ch 3]

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

"Accredited or 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 registration as an advanced registered nurse practitioner; or grants a baccalaureate, master's or doctorate degree with a major in nursing.

"Address" means a street address in any state when a street address is available or a rural route address when a street address is not available.

"Applicant" means a person who is qualified to take the examination or apply for licensure.

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

"Examination" means any of 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 packet 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 packet 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 packet and the criminal history background checks by the DCI and the FBI).
4. Application for registration as an advanced registered nurse practitioner, $81 for any length of registration 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 packet and the criminal history background checks by the DCI and the FBI).
8. For the renewal of a license to practice as a registered nurse/licensed practical nurse, $99 for a three-year period.
9. For a duplicate or reissued wallet card or original certificate to practice as a registered nurse/licensed practical nurse, or registration card or original certification to practice as an advanced registered nurse practitioner, $20.
10. For late renewal of a registered nurse/licensed practical nurse license, $50, plus the renewal fee as specified in paragraph "8" of this rule.
11. 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.
12. For a certified copy of an original document, $20.
13. For special licensure, $62.
14. For the convenience of online license renewal, a charge will be assessed.
15. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, $50. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

"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. Pursuant to 655—subrule 16.2(4), the former home state license shall no longer be valid upon the issuance of a new home state license.

"Late license" means a registered nurse or licensed practical nurse license that has not been renewed by the expiration date on the wallet card. 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 certificate to practice as a registered nurse or licensed practical nurse under the laws of this state.

"NCLEX®" means National Council Licensure Examination for registered nurse/licensed practical nurse licensure.

"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" 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.

"Repayment receipts" means those moneys collected by a department or establishment that supplement an appropriation made by the legislature. Repayment receipts, as defined in Iowa Code section 8.2, apply to the definition of "fees," paragraphs "5," "6," "9," "12," "14," and "15" in this rule.

"Temporary license" means a license issued on a short-term basis for a specified time pursuant to subrule 3.5(3).

"Unlicensed student" means a person enrolled in a nursing education program who has never been licensed as a registered nurse or licensed practical/vocational nurse in any U.S. jurisdiction.

"Verification" means the process whereby the board provides a certified statement that the license of a registered nurse/licensed practical nurse is active, inactive, or encumbered, or an advanced registered nurse practitioner is registered in this state.

This rule is intended to implement Iowa Code section 147.80.

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. The nurse shall maintain a copy of the license and shall have it available for inspection when engaged in the practice of nursing in Iowa.

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 shall maintain a copy of the license and shall have it available for inspection when engaged in the practice of nursing in Iowa.

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. An individual from another country who is enrolled in a course of study for registered nurses or licensed practical nurses shall hold an active license in the U.S. jurisdiction(s) in which the individual provides patient care.

This rule is intended to implement Iowa Code section 147.2.

655—3.3(17A,147,152,272C) Qualifications for licensure.

3.3(1) Applicants shall meet the requirements set forth in Iowa Code sections 147.3 and 152.7. Requirements include:

a. 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. Theory and clinical experience shall include medical nursing, surgical nursing, obstetric nursing and nursing of children. Registered nurse applicants shall additionally have completed theory and clinical experience in psychiatric nursing.

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

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

3.3(2) The requirement listed in paragraph 3.3(1)*"b"* is subject to the following exceptions:

a. A practical nurse applicant must have written the same examination as that administered in Iowa and achieved a score established as passing for that test by the board unless the applicant graduated and was licensed prior to July 1951.

b. An applicant whose national examination scores do not meet the Iowa requirements in effect at the time of the examination and who wishes to become licensed in Iowa may appeal to the board. The board may require the applicant to pass the current examination.

This rule is intended to implement Iowa Code sections 147.2 and 152.7(3).

[**ARC 8222B**, IAB 10/7/09, effective 11/11/09]

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

3.4(1) Applicants shall meet qualifications for licensure set forth in subrule 3.3(1).

3.4(2) The board contracts with the National Council of State Boards of Nursing, Inc. to use the NCLEX® for registered nurses and licensed practical nurses.

a. The passing standard for the NCLEX® is determined by the board.

b. NCLEX® results are reported as pass or fail.

c. The NCLEX® is administered according to guidelines set forth by the National Council of State Boards of Nursing, Inc.

d. Examination statistics are available to the public.

3.4(3) Application—graduates of board-approved programs.

a. The board shall:

(1) Provide information about licensure application to applicants, nursing education programs in Iowa, and others upon request.

(2) Determine eligibility of each applicant upon receipt of an application, fees, official nursing transcript and notification of NCLEX® registration.

b. The applicant shall:

(1) Submit a completed application for license by examination.

(2) Submit two completed sets of the fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

(3) Submit fee for application for license by examination plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

(4) Register for the NCLEX® and submit registration fee to the national test service.

(5) Direct the nursing program to submit to the board an official nursing transcript denoting the date of entry, date of graduation, and diploma or degree conferred.

(6) Inform the board that the primary state of residence is Iowa or a noncompact state and provide a current street address.

(7) Submit a copy of a sentencing order(s) with the license application if an applicant has a criminal conviction history.

(8) Self-schedule the examination at an approved testing center. Applicants who do not test within 91 days of authorization are required to submit a new application and fee to the board.

(9) Complete NCLEX® registration within 12 months of board receipt of the application for license, fingerprint packet and fees. The board reserves the right to destroy documents after 12 months.

3.4(4) Application—individuals educated and licensed in another country.

a. The board shall:

(1) Provide information about licensure application to applicants and others upon request.

(2) Determine eligibility of each applicant upon receipt of:

1. Application for licensure by examination.

2. Two completed sets of the fingerprint packet to facilitate a national criminal history background check.

3. Application fee for license by examination plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

4. Notification of NCLEX® registration.

5. Official nursing transcript denoting date of entry and date of graduation validated by the Commission on Graduates of Foreign Nursing Schools (CGFNS).

6. Validation of licensure/registration in the original country by CGFNS.

7. Full education course-by-course report submitted by CGFNS for licensed practical nurse and registered nurse applicants.

8. Verification of ability to read, write, speak and understand the English language as determined by the results of the Test of English as a Foreign Language (TOEFL) or the International English Language Testing System (IELTS) for licensed practical nurse and registered nurse applicants. Applicants shall be exempt from the TOEFL or IELTS examination when the native language is English; nursing education was completed in a college, university or professional school located in Australia, Canada (except Quebec), Ireland, New Zealand or the United Kingdom; language of instruction in the nursing program was English; and language of the textbooks in the nursing program was English.

b. The applicant shall:

(1) Submit completed application for license by examination, including two sets of the completed fingerprint packet.

(2) Submit fee for application for license by examination plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

(3) Register for the NCLEX® and submit registration fee to the national test service.

(4) Direct CGFNS to validate the official nursing transcript.

(5) Direct CGFNS to validate licensure/registration in the original country.

(6) Complete the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) for licensed practical nurse and registered nurse applicants.

(7) Complete TOEFL or IELTS requirements for licensed practical nurse and registered nurse applicants.

(8) Inform the board of primary state of residence and current mailing address.

(9) Submit a copy of a sentencing order(s) with the license application if an applicant has a criminal conviction history.

(10) Self-schedule the examination at an approved testing center. Applicants who do not test within 91 days of authorization are required to submit a new application and fee to the board.

(11) Complete NCLEX® registration within 12 months of board receipt of the application for license, fingerprint packet and fees. The board reserves the right to destroy documents after 12 months.

3.4(5) Application—individuals with disabilities. Individuals with disabilities as defined in the Americans with Disabilities Act shall be provided modifications in the NCLEX® or NCLEX® administration.

a. The board shall:

(1) Notify applicants of the availability of test modifications for individuals with documented disabilities.

(2) Upon request, notify applicants of the process for obtaining board approval of test modification as defined in paragraph 3.4(5)*"b."*

(3) Determine eligibility for test modification upon receipt of:

1. Written request for test modifications in the NCLEX® or NCLEX® administration.

2. Written documentation of the applicant's disability and need for test modifications, including results of diagnostic testing when appropriate, submitted by a qualified professional with expertise in the area of the diagnosed disability, or interpretation of results.

3. Written documentation of test modifications provided to the applicant while enrolled in the nursing education program, if applicable.

b. The applicant shall:

(1) Submit to the board a written request for specific modifications in the NCLEX® or NCLEX® administration.

(2) Direct a qualified professional with expertise in the area of the diagnosed disability or interpretation of test results to submit to the board written documentation of the applicant's disability and need for specific test modifications, including the history of the disability and results of diagnostic testing.

(3) Direct the nursing program to submit to the board documentation of test modifications provided to the applicant while enrolled in the nursing education program, if applicable.

(4) Complete examination application requirements defined in subrule 3.4(3) or 3.4(4).

3.4(6) Reexamination.

a. An applicant who has graduated from an approved practical nurse program and has failed the NCLEX-PN® is eligible to take the NCLEX-PN® an indefinite number of times.

b. An applicant who has graduated from an approved registered nurse program and has failed the NCLEX-RN® is eligible to take the NCLEX-RN® an indefinite number of times.

c. An applicant who fails the NCLEX® and reapplies for license by examination shall be required to complete application for license by examination, submit the fee for application by examination, complete NCLEX® registration and submit a registration fee to the national test service. Two sets of the completed fingerprint packet, plus the fee identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C), are required if 12 months have passed since the previous criminal history background check.

3.4(7) Certificate of license by examination. Upon completion of the relevant qualifications for license by examination defined in these rules, the board shall issue a certificate of license by examination and a current license to practice as a registered nurse/licensed practical nurse. The board staff may issue a certificate of license pending receipt of a report on the applicant from the DCI/FBI.

This rule is intended to implement Iowa Code sections 147.36, 147.80 and 152.7(3).

[**ARC 8222B**, IAB 10/7/09, effective 11/11/09; **ARC 8810B**, IAB 6/2/10, effective 7/7/10]

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

3.5(1) *Qualifications for licensure by endorsement.* The endorsee shall meet the qualifications for licensure defined in subrule 3.3(1).

3.5(2) *Applicants currently licensed in another state.* Application for licensure to practice as a registered nurse or licensed practical nurse by endorsement shall be made according to the following process:

a. The board shall:

(1) Provide application forms and instructions to applicants upon request.

(2) Determine eligibility of each applicant upon receipt of an application, fees, official nursing transcript, and verification of license submitted by state of original license or the National Council of State Boards of Nursing, Inc.

b. The applicant shall:

(1) Submit a completed application form for license by endorsement.

(2) Submit two sets of the fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

(3) Submit the fee for license by endorsement plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

(4) Direct the nursing program to submit to the board an official nursing transcript denoting the date of entry, date of graduation and diploma or degree conferred.

(5) Submit the application form for verification of original licensure. If the original state of licensure participates in the National Council of State Boards of Nursing, Inc. Electronic Nurse Licensure System (NURSYS), send form and application fee directly to the National Council of State Boards of Nursing, Inc.

(6) Submit evidence attesting that Iowa is the primary state of residence if the applicant is changing primary state of residence from another party state as outlined in rule 655—16.2(152) or that the primary state of residence is a noncompact state.

(7) Complete the application process within 12 months from the date of receipt of the application. The board reserves the right to destroy the documents after 12 months.

c. An endorsement applicant who has been disciplined by a licensing authority in another state must indicate the jurisdiction of the action(s) when submitting application materials. A copy of all relevant disciplinary documents will be obtained for board review prior to a determination regarding licensure. The board may impose conditions for licensure.

d. An endorsement applicant who has a criminal conviction history must submit a copy of the sentencing order when submitting application materials. The board may impose conditions for licensure.

e. A license shall not be issued to an applicant who fails to complete the licensure process within 12 months from the date of receipt of the application.

3.5(3) *Application—individuals educated and licensed in another country.*

a. The board shall:

(1) Provide application forms and instructions to applicants upon request.

(2) Determine eligibility of each applicant upon receipt of an application, fingerprint packet, fees, official nursing transcript denoting date of entry and date of graduation validated by the Commission on Graduates of Foreign Nursing Schools (CGFNS), validation of licensure/registration in the original country by CGFNS, full education course-by-course report from CGFNS, and verification of license submitted by state of original license or the National Council of State Boards of Nursing, Inc.

b. The applicant shall:

(1) Submit completed application for licensure by endorsement, including two sets of the completed fingerprint packet.

(2) Submit fee for application for licensure by endorsement plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C). All fees are nonrefundable.

(3) Direct CGFNS to validate the official nursing transcript.

(4) Direct CGFNS to validate licensure/registration in the original country.

(5) Apply for the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) for licensed practical nurse and registered nurse applicants, or direct CGFNS to verify that a certificate letter was issued, or send the completed CES report to the board.

(6) Inform the board of primary state of residence and current mailing address.

(7) Submit a copy of a sentencing order(s) with the license application if an applicant has a criminal conviction history.

3.5(4) *Temporary license.* A temporary license shall be issued to an applicant who is licensed in another state if the applicant meets the qualifications for a license as outlined in subrule 3.3(1). The application form and endorsement fee plus the fee for evaluation of the fingerprint packet and the criminal history background checks as identified in the definition of "fees" in rule 655—3.1(17A,147,152,272C), verification of license form and two sets of the fingerprint packet to facilitate a national criminal history background check shall be on file in the office of the board prior to the issuance of the temporary license.

a. A temporary licensee may use the appropriate title of registered nurse or licensed practical nurse and the appropriate abbreviation R.N. or L.P.N.

b. The temporary wallet card must be signed by the licensee to be valid. The temporary license shall be issued for a period of 30 days. A second temporary license may be issued for a period not to exceed 30 days or at the discretion of the executive director.

c. A temporary license shall be issued to an applicant who has incurred disciplinary action in another state when the license is not currently encumbered.

d. A temporary license shall not be issued to an applicant with a criminal conviction history.

e. A temporary license shall not be issued to an applicant educated and licensed in another country until the full education course-by-course report application of the CGFNS Credentials Evaluation Service (CES) has been received by the board, CGFNS has verified that a certificate letter was issued, or a completed CES report has been sent to the board.

3.5(5) *Certificate of license by endorsement.* Upon completion of the endorsement procedures defined in these rules, the board shall issue a certificate of license by endorsement and a current license to practice as a registered nurse/licensed practical nurse. The board staff may issue a certificate of license pending receipt of a report on the applicant from the DCI/FBI.

This rule is intended to implement Iowa Code sections 147.2 and 152.9.

[**ARC 8222B**, IAB 10/7/09, effective 11/11/09; **ARC 8810B**, IAB 6/2/10, effective 7/7/10]

655—3.6(17A,147,152,272C) Special licensure for those licensed in another country. A special license may be granted by the board on an individual basis to allow a nurse licensed in another country who is not eligible for endorsement to practice nursing in Iowa for a fixed period of time under certain conditions. Special licensure shall allow the nurse to provide care in a specialty area, provide consultation or teaching where care is directed, serve as a research or teaching assistant, or obtain clinically based continuing education.

1. Upon request, the board shall provide application materials to the applicant or sponsor.

2. The applicant shall provide identifying information, history of criminal conviction, history of licensure in another jurisdiction, and reason for special licensure.

3. The applicant shall complete the application, submit a fee as identified in rule 655—3.1(17A,147,152,272C) and provide evidence of certification by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a Test of English as a Foreign Language (TOEFL) score of at least 500 for the paper-based TOEFL or 173 for the computer-based TOEFL.

4. Board staff shall determine the validity of the request based on the need, duration and location of special licensure identified on the application, and staff shall notify the applicant of ineligibility for special licensure if the application is incomplete or indicates a criminal conviction history or evidence of licensure in another jurisdiction.

5. The board shall grant special licensure to eligible applicants. The license shall be identified as a special license and identify duration and conditions as designated in this rule. The period of special licensure shall be determined by the board and may be extended at the request of the applicant.

6. If the board denies special licensure, the individual may be eligible for licensure by examination in accord with subrule 3.4(4).

7. The licensee shall be subject to all rules and regulations promulgated by the board except those pertaining to verification, renewal, late renewal, inactivation, reactivation and continuing education requirements.

This rule is intended to implement Iowa Code section 147.2.

[**ARC 8222B**, IAB 10/7/09, effective 11/11/09]

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 mandatory as defined in Iowa Code section 147.9. 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 birth month.

3.7(3) *Renewal.* At least 60 days prior to expiration of the license, the licensee may renew the license online at the board's Web site. Renewal applications are also available by mail upon request.

a. The required materials and the renewal fee as specified in rule 655—3.1(17A,147,152,272C) are to be submitted to the board office 30 days before license expiration.

b. When the licensee has satisfactorily completed the requirements for renewal 30 days before expiration of the previous license, a renewal wallet card shall be mailed to the licensee before expiration of the previous license.

c. 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 paragraph *"g."*

d. 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 paragraph *"g."*

e. 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 paragraph *"g."*

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

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

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

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

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver 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.

h. The board may select licensees for audit of compliance with the requirements in paragraphs *"c"* to *"g."*

3.7(4) *Late renewal.* The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 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 on the wallet card.

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 on the wallet card or the board office has been notified by another compact state that a licensee has declared a new primary state. Pursuant to 655—subrule 16.2(4), 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 shall 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 contact the board office.

(1) The licensee shall be provided an application, a continuing education report form, fingerprint packet 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 12 contact hours of continuing education, as specified in 655—Chapter 5, within the 12 months prior to reactivation.

(3) Upon receipt of the completed reactivation application, required continuing education materials, two sets of the fingerprint packet 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 pending receipt of a report on the applicant from the DCI/FBI.

3.7(6) *Duplicate wallet card or certificate.* A duplicate wallet card or certificate shall be required if the current card or certificate is lost, stolen, destroyed or not received by the licensee within 60 days from the date the license is issued. 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.

This rule is intended to implement Iowa Code sections 147.2 and 147.9 to 147.11.

[**ARC 8222B**, IAB 10/7/09, effective 11/11/09]

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 is active, inactive or encumbered in Iowa.

This rule is intended to implement Iowa Code sections 147.2 and 147.8.

655—3.9(17A,272C) License denial.

3.9(1) An applicant who has been denied licensure by the board may appeal the decision and request a hearing on related issues. A notice of appeal and request for hearing must be served upon the board within 30 days following the date the notification of licensure denial was mailed to the applicant. The request for hearing shall specifically delineate the facts to be contested at hearing.

3.9(2) All hearings held pursuant to this rule shall be held in accordance with the process outlined in 655—Chapter 4.

This rule is intended to implement Iowa Code chapters 17A 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.

2 Effective date of 11/9/88 delayed 70 days by the Administrative Rules Review Committee at its October meeting. Delay lifted by ARRC 11/16/88.

CHAPTER 4
DISCIPLINE

[Prior to 5/23/84, IAC, "Disciplinary Proceedings" appeared as Ch 8]
[Prior to 5/23/84, "Licensure to Practice—Licensed Practical Nurse" appeared as Ch 4. See Ch 3.]
[Prior to 8/26/87, Nursing Board[590] Ch 4]

655—4.1(17A,147,152,272C) Board authority. The board of nursing may discipline a registered nurse, a licensed practical nurse or an advanced registered nurse practitioner for any grounds stated in Iowa Code chapters 147, 152 and 272C, or rules promulgated thereunder.

655—4.2(17A,147,152,272C) Complaints and investigations. Complaints are allegations of wrongful acts or omissions relating to the ethical or professional conduct of a licensee.

4.2(1) In accordance with Iowa Code section 272C.3(1)*"c,"* the board shall investigate or review, upon written complaint or upon its own motion pursuant to other information received by the board, alleged acts or omissions which the board reasonably believes constitute cause for licensee discipline.

4.2(2) The executive director, or an authorized designee, may review and investigate any complaint information received, in order to determine the probability that a violation of Iowa law or administrative rule has occurred.

655—4.3(17A,147,152,272C) Issuance of investigatory subpoenas. The board shall have the authority to issue an investigatory subpoena in accordance with the provisions of Iowa Code section 17A.13.

4.3(1) The executive director or designee may, upon the written request of a board investigator or on the executive director's own initiative, subpoena books, papers, records and other real evidence which are necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

a. The nature of the complaint reasonably justifies the issuance of a subpoena;

b. Adequate safeguards have been established to prevent unauthorized disclosure;

c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and

d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

4.3(2) A written request for a subpoena or the executive director's written memorandum in support of the issuance of a subpoena shall contain the following:

a. The name and address of the person to whom the subpoena will be directed;

b. A specific description of the books, papers, records or other real evidence requested;

c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should institute a contested case proceeding; and

d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.3(3) Each subpoena shall contain the following:

a. The name and address of the person to whom the subpoena is directed;

b. A description of the books, papers, records or other real evidence requested;

c. The date, time and location for production or inspection and copying;

d. The time within which a motion to quash or modify the subpoena must be filed;

e. The signature, address and telephone number of the executive director or designee;

f. The date of issuance;

g. A return of service.

4.3(4) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.3(5) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.3(6) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.3(7) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified that the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

655—4.4(17A,147,152,272C) Board action. The board shall review investigative conclusions and do one of the following:

1. Close the investigative case without action.
2. Request further inquiry.
3. Appoint a peer review committee to assist with the investigation.
4. Determine the existence of sufficient probable cause and order a disciplinary hearing to be held in compliance with Iowa Code section 272C.6.

655—4.5(17A,147,152,272C) Peer review committee. The board may establish a peer review committee to assist with the investigative process when deemed necessary.

4.5(1) The committee shall determine if the conduct of the licensee conforms to minimum standards of acceptable and prevailing practice of nursing and submit a report of its findings to the board.

4.5(2) The board shall review the committee's findings and proceed with action available under rule 655—4.4(17A,147,152,272C).

4.5(3) The peer review committee shall observe the confidentiality requirements imposed by Iowa Code section 272C.6.

655—4.6(17A,147,152,272C) Grounds for discipline. A licensee may be disciplined for failure to comply with the rules promulgated by the board and for any wrongful act or omission related to nursing practice, licensure or professional conduct.

4.6(1) In accordance with Iowa Code section 147.55(1), behavior which constitutes fraud in procuring a license may include, but need not be limited to, the following:

a. Falsification of the application, credentials, or records submitted to the board for licensure as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

b. Fraud, misrepresentation, or deceit in taking the licensing examination or in obtaining a license as a registered nurse, licensed practical nurse, or registration as an advanced registered nurse practitioner.

c. Impersonating any applicant in any examination for licensure as a registered nurse or licensed practical nurse.

4.6(2) In accordance with Iowa Code section 147.55(2), professional incompetency may include, but need not be limited to, the following:

a. Lack of knowledge, skill, or ability to discharge professional obligations within the scope of nursing practice.

b. Deviation by the licensee from the standards of learning, education, or skill ordinarily possessed and applied by other nurses in the state of Iowa acting in the same or similar circumstances.

c. Willful or repeated departure from or failure to conform to the minimum standards of acceptable and prevailing practice of nursing in the state of Iowa.

d. Willful or repeated failure to practice nursing with reasonable skill and safety.

e. Willful or repeated failure to practice within the scope of current licensure or level of preparation.

f. Failure to meet the standards as defined in 655—Chapter 6, Iowa Administrative Code.

g. Failure to comply with the requirements of Iowa Code chapter 139A.

4.6(3) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes knowingly making misleading, deceptive, untrue, or fraudulent representations in the practice of a profession may include, but need not be limited to, the following:

a. Oral or written misrepresentation relating to degrees, credentials, licensure status, records and applications.

b. Falsifying records related to nursing practice or knowingly permitting the use of falsified information in those records.

c. Failing to provide written notification of a change of address to the board within 30 days of the event.

d. Failing to notify the board within 30 days from the date of the final decision in a disciplinary action taken by the licensing authority of another state, territory or country.

e. Failing to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction wherein it occurred.

f. Failing to submit an additional completed fingerprint packet as required and applicable fee, when a previous fingerprint submission has been determined to be unacceptable, within 30 days of a request made by board staff.

g. Failing to submit verification of compliance with continuing education requirements or exceptions for the period of time being audited.

4.6(4) In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Performing nursing services beyond the authorized scope of practice for which the individual is licensed or prepared.

b. Allowing another person to use one's nursing license for any purpose.

c. Failing to comply with any rule promulgated by the board related to minimum standards of nursing.

d. Improper delegation of nursing services, functions, or responsibilities.

e. Committing an act or omission which may adversely affect the physical or psychosocial welfare of the patient or client.

f. Committing an act which causes physical, emotional, or financial injury to the patient or client.

g. Engaging in sexual conduct, including inappropriate physical contact or any behavior that is seductive, demeaning, or exploitative, with regard to a patient or client.

h. Failing to report to, or leaving, a nursing assignment without properly notifying appropriate supervisory personnel and ensuring the safety and welfare of the patient or client.

i. Violating the confidentiality or privacy rights of the patient or client.

j. Discriminating against a patient or client because of age, sex, race, creed, illness, or economic or social status.

k. Failing to assess, accurately document, or report the status of a patient or client.

l. Misappropriating medications, property, supplies, or equipment of the patient, client, or agency.

m. Fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses.

n. Practicing nursing while under the influence of alcohol, illicit drugs, or while impaired by the use of legitimately prescribed pharmacological agents or medications.

o. Being involved in the unauthorized manufacture, possession, distribution, or use of a controlled substance.

p. Pleading guilty to or being convicted of a misdemeanor or felony related to the practice of nursing, without regard to the jurisdiction wherein the action occurred.

q. Engaging in behavior that is contradictory to professional decorum.

r. Failing to report suspected wrongful acts or omissions committed by a licensee of the board.

s. Failing to comply with an order of the board.

655—4.7(17A,147,152,272C) Sanctions. A sanction is a disciplinary action by the board which resolves a contested case. The board may impose one or more of the following:

1. Revocation.
2. Suspension.
3. Probation.
4. Civil penalty. A fine may be imposed in accordance with Iowa Code section 272C.3(2)*"e."* Assessment of a fine shall be specified in the order and may not exceed a maximum amount of $1,000. Fines may be incurred for:

- Practicing without an active license: $50 for each calendar month or part thereof, beginning on the date that a license enters inactive status.
- Obtaining a license by falsification of continuing education records: $50 for each contact hour falsified.
- Violating rule 655—4.6(17A,147,152,272C): an amount deemed appropriate.

5. Continuing education, reexamination, or both.
6. Citation and warning.

655—4.8(17A,147,152,272C) Panel of specialists. The board may appoint a panel of nurses who are specialists to ascertain the facts of a case pursuant to Iowa Code section 272C.6(2). The board chairperson or designee shall appoint the presiding officer.

4.8(1) The executive director shall set the date, time, and location of the hearing and make proper notification to all parties.

4.8(2) The panel of specialists shall:

a. Enter into the record the names of the presiding officer, members of the panel, the parties and their representatives.

b. Enter into the record the notice and evidence of service, order for hearing, statement of charges, answer, if available, and any other pleadings, motions or orders.

c. Receive opening statements from the parties.

d. Receive evidence, in accordance with Iowa Code section 17A.14, on behalf of the state of Iowa and on behalf of the licensee.

e. Question the witnesses.

f. Receive closing statements from the parties.

g. Determine the findings of fact by a majority vote and make a written report of its findings to the board within a reasonable period.

655—4.9(17A,147,152,272C) Informal settlement. Pursuant to the provisions of Iowa Code sections 17A.10, 17A.12 and 272C.3, the board may consider resolution of disciplinary matters through informal settlement prior to filing charges or the commencement of contested case proceedings. The executive director or a designee may negotiate with the licensee regarding a proposed disposition of the controversy. Upon consent of both parties, the board will review the proposal for action.

655—4.10(17A,147,152,272C) Voluntary surrender. A voluntary surrender of licensure may be submitted to the board as resolution of a contested case or in lieu of continued compliance with a disciplinary decision of the board.

655—4.11(17A,147,152,272C) Application for reinstatement. Any person whose license to practice nursing has been suspended or revoked by order of the board or has been voluntarily surrendered may apply for reinstatement. A request for reinstatement must be accomplished in accordance with the terms and conditions specified in the board's order and filed in conformance with these rules.

4.11(1) If the license was voluntarily surrendered, or if the order for suspension or revocation did not establish terms and conditions for reinstatement, an initial application may not be filed until one year has

elapsed from the date of the order. Persons who have failed to satisfy the terms and conditions imposed by the board shall not be entitled to reinstatement.

4.11(2) The respondent shall initiate proceedings for licensure reinstatement by making application to the board. The application shall be subject to the same rules of procedure as other contested cases before the board. The person filing the application for reinstatement shall immediately serve a copy upon the attorney for the state of Iowa and shall in the same manner serve any additional documents filed in connection with the application.

4.11(3) The application shall allege facts and circumstances which, if established, will be sufficient to enable the board to determine that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. The application shall include written evidence supporting the applicant's assertion that the basis for the revocation, suspension, or voluntary surrender no longer exists and that it shall be in the public interest for the license to be reinstated. Such evidence may include, but is not limited to: medical and mental health records establishing successful completion of any necessary medical or mental health treatment and aftercare recommendations; documentation verifying successful completion of any court-imposed terms of probation; statements from support group sponsors verifying active participation in a support group; verified statements from current and past employers attesting to employability; and evidence establishing that prior professional competency or unethical conduct issues have been resolved. The burden of proof to establish such facts shall be on the applicant.

4.11(4) The executive director or an appointed designee shall review the application for reinstatement and determine if it conforms to the requirements imposed by these rules. Applications failing to comply with these requirements will be denied. Such denial shall be in writing, stating the grounds, and may be appealed to the board in compliance with the provisions of Iowa Code chapter 17A.

4.11(5) Applications not denied for failure to conform to the requirements imposed by these rules shall be set for hearing before the board. The hearing shall be a contested case hearing within the meaning of Iowa Code section 17A.12, and the order to grant or deny reinstatement shall incorporate findings of fact and conclusions of law. If reinstatement is granted, terms and conditions may be imposed. The applicant shall be provided a license reinstatement packet containing an application, a continuing education report form, fingerprint cards, and a statement of the fees as defined in rule 655—3.1(17A,147,152,272C).

[**ARC 8809B**, IAB 6/2/10, effective 7/7/10]

655—4.12(17A,147,152,272C) Licensee review committee. In accordance with the provisions of Iowa Code section 272C.3(1)*"k,"* the board shall appoint a licensee review committee for the purpose of evaluating and monitoring licensees who self-report physical or mental impairments. The committee shall be comprised of the executive director or designee, a representative with chemical dependency or mental health treatment experience, and a recovering nurse with at least five consecutive years of sobriety.

4.12(1) Eligibility for referral to the committee shall be determined by the executive director in accordance with the following criteria:

a. The licensee must self-report the impairment.

b. The licensee must submit an evaluation summary, diagnosis, or other evidence which supports a determination that an impairment exists.

c. There must be no indication of practice-related problems.

d. There must be no documented violation of law or board rules related to impairment-associated behaviors.

e. There must be no record of prior board sanction for impairment-related problems.

4.12(2) The committee shall meet as necessary in order to interview potential participants, develop consensual agreements for new referrals, review licensee compliance, and determine eligibility for continued monitoring.

4.12(3) Conditions placed upon the licensee and the duration of the monitoring period shall be established by the committee and communicated to the licensed individual in writing.

4.12(4) The licensee must consent to the conditions proposed by the review committee in order to participate in this program.

4.12(5) Failure to comply with the provisions of the agreement shall require the committee to make immediate referral of the matter to the board for possible disciplinary action.

4.12(6) Information in possession of the licensee review committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6.

655—4.13(17A,147,152,272C) Contested case proceedings. Contested case proceedings before the board of nursing are held in accordance with the provisions of Iowa Code chapter 17A. The following rules apply to board activities initiated upon a determination of probable cause that result in the issuance of a notice of hearing. Any adverse agency action to limit or revoke the multistate licensure privilege granted under the provisions of the nurse licensure compact shall be conducted as a contested case proceeding.

655—4.14(17A,152E) Definitions. Except where otherwise specifically defined by law:

"Adverse action" means a home or remote state action.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Home state" means the party state, which is the nurse's primary state of residence.

"Home state action" means any administrative, civil, equitable, or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensening board or other authority, including actions against an individual's license such as revocation, suspension, probation, or any other action which affects a nurse's authorization to practice.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means, unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the chairperson of the board or designee.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the board of nursing did not preside.

"Remote state" means a party state, other than the home state, where either of the following applies:

1. Where the patient is located at the time nursing care is provided.
2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing care is located.

"Remote state action" means either of the following:

1. Any administrative, civil, equitable, or criminal action permitted by a remote state's laws which is imposed on a nurse by the remote state's licensing board or other authority, including actions against an individual's multistate licensure privilege to practice in the remote state.
2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards of remote states.

655—4.15(17A) Time requirements.

4.15(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

4.15(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

655—4.16(17A) Notice of hearing. The board shall issue an order, notice of hearing, and statement of charges following its determination of probable cause pursuant to Iowa Code section 17A.12(2). Delivery of the notice of hearing constitutes the commencement of the contested case proceeding.

4.16(1) The date, time, and location of the hearing shall be set by the chairperson or the executive director. The licensee shall be notified at least 30 days prior to the scheduled hearing.

4.16(2) Notification shall be in writing delivered either by personal service as in civil actions or by restricted certified mail with return receipt requested. When service cannot be accomplished in such a manner:

a. An affidavit shall be prepared outlining the measures taken to attempt service and shall become a part of the file when a notice cannot be delivered by personal service or certified mail, return receipt requested.

b. Notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the licensee. The newspaper will be selected by the executive director or a designee. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

655—4.17(17A) Presiding officer. Disciplinary hearings shall be conducted by the board pursuant to Iowa Code section 272C.6.

4.17(1) The chairperson of the board shall designate the presiding officer in accordance with the provisions of section 17A.11. For nondisciplinary proceedings, any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing.

4.17(2) The executive director may deny the request upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witness is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The request would not conform to the disciplinary hearing provision of Iowa Code section 272C.6.

4.17(3) The agency (or its designee) shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

4.17(4) All rulings by an administrative law judge are subject to appeal to the agency. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.17(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

655—4.18(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

655—4.19(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine

the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

655—4.20(17A) Disqualification.

4.20(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.20(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation or the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 4.20(3) and 4.32(9).

4.20(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.20(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.20(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 4.34(17A).

655—4.21(17A) Consolidation—severance.

4.21(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues

involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.21(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

655—4.22(17A) Pleadings.

4.22(1) Pleadings may be required by rule, by notice of hearing, or by order of the presiding officer.

4.22(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney.

4.22(3) Answer. An answer may be filed within 20 days of service of the petition. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

655—4.23(17A) Service and filing of pleadings and other papers.

4.23(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.23(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.23(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the board.

4.23(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the board office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.23(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in the United States mail or state interoffice mail.
>
> (Date) (Signature)

655—4.24(17A) Discovery.

4.24(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.24(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.24(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.24(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

655—4.25(17A,272C) Issuance of subpoenas in a contested case.

4.25(1) Subpoenas issued in a contested case may compel the attendance of witnesses at deposition or hearing and may compel the production of books, papers, records, and other real evidence. A command to produce evidence or to permit inspection may be joined with a command to appear at deposition or hearing or may be issued separately. Subpoenas may be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in subrule 4.3(1) have been satisfied prior to the issuance of the subpoena.

4.25(2) A request for a subpoena shall include the following information, as applicable, unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:

a. The name, address and telephone number of the person requesting the subpoena;

b. The name and address of the person to whom the subpoena shall be directed;

c. The date, time and location at which the person shall be commanded to attend and give testimony;

d. Whether the testimony is requested in connection with a deposition or hearing;

e. A description of the books, papers, records or other real evidence requested;

f. The date, time and location for production or inspection and copying; and

g. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 4.3(1) have been satisfied.

4.25(3) Each subpoena shall contain, as applicable, the following:

a. The caption of the case;

b. The name, address and telephone number of the person who requested the subpoena;

c. The name and address of the person to whom the subpoena is directed;

d. The date, time and location at which the person is commanded to appear;

e. Whether the testimony is commanded in connection with a deposition or hearing;

f. A description of the books, papers, records or other real evidence the person is commanded to produce;

g. The date, time and location for production or inspection and copying;

h. The time within which the motion to quash or modify the subpoena must be filed;

i. The signature, address and telephone number of the executive director or designee;

j. The date of issuance;

k. A return of service.

4.25(4) Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the executive director or designee shall mail copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

4.25(5) Any person who is aggrieved or adversely affected by compliance with the subpoena or any party to the contested case who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the

board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

4.25(6) Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision or the board may issue a decision. Oral argument may be scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

4.25(7) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the board by serving on the executive director, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

4.25(8) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until there is a final decision in the contested case.

655—4.26(17A) Motions.

4.26(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.26(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.26(3) The presiding officer may schedule oral argument on any motion.

4.26(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the agency or an order of the presiding officer.

655—4.27(17A) Prehearing conference.

4.27(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the board office to all parties. For good cause the presiding officer may permit variances from this rule.

4.27(2) Each party shall bring to the prehearing conference:

a. A final list of witnesses the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names;

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them; and

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.27(3) In addition to the requirements of subrule 4.27(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.27(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

655—4.28(17A) Continuances. The executive director shall have the authority to grant a continuance after consultation, if needed, with the chairperson of the board.

A request for continuance of a contested case matter must be submitted in writing to the board not later than seven days prior to the scheduled date of the hearing. Exceptions shall be granted at the discretion of the executive director only in situations involving extenuating, extraordinary, or emergency circumstances.

655—4.29(17A) Hearing procedures.

4.29(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.29(2) All objections shall be timely made and stated on the record.

4.29(3) Parties have the right to participate or be represented in all hearings or prehearing conferences related to their case. Any party may be represented by an attorney or another person authorized by law.

4.29(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.29(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.29(6) Witnesses may be sequestered during the hearing.

4.29(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

655—4.30(17A) Evidence.

4.30(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.30(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.30(3) Evidence in the proceeding shall be confined to those issues to which the parties received notice prior to the hearing, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.30(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

4.30(5) Any party may object to specific evidence or may request limits on scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.30(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an order of proof and inserted in the record.

655—4.31(17A) Default.

4.31(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.31(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.31(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 655—4.36(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit from a person with personal knowledge of each such fact attached to the motion.

4.31(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.31(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.31(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 236.

4.31(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 655—4.34(17A).

655—4.32(17A) Ex parte communication.

4.32(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case, except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.20(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties, as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.32(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.32(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

4.32(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 655—4.23(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through telephone conference call, which includes all parties or their representatives.

4.32(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.32(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.20(1) or other law and they comply with subrule 4.32(1).

4.32(7) Communications with the presiding officer involving scheduling or uncontested procedural matters do not require notice or opportunity for parties to participate. A party should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 655—4.29(17A).

4.32(8) Disclosure of prohibited communications. A presiding officer who received a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.32(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment, unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.32(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the board's executive director for possible sanctions including: censure, suspension, dismissal, or other disciplinary action.

655—4.33(17A) Recording costs. Upon request, the board of nursing shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of such recording, unless otherwise provided by law.

655—4.34(17A) Final decision. When the board presides over reception of the evidence at the hearing, its decision is a final decision.

4.34(1) When a panel of specialists presides over the reception of evidence at the hearing, the findings of fact shall be considered by the board at the earliest practicable time. The decision of the board is a final decision.

4.34(2) A final decision in a contested case proceeding shall be in writing and include findings of fact and conclusions of law, separately stated.

a. Findings of fact shall be accompanied by a concise and explicit statement of underlying facts supporting the findings.

b. The decision shall include an explanation of why the relevant evidence in the record supports each material finding of fact.

c. Conclusions of law shall be supported by cited authority or by a reasoned opinion.

4.34(3) The decision or order shall be promptly delivered to the parties in the manner provided by Iowa Code section 17A.12 as amended by 1998 Iowa Acts, chapter 1202.

4.34(4) The final decision is a public record pursuant to Iowa Code section 272C.6(4).

655—4.35(17A) Appeals.

4.35(1) *Appeal by party.* Any adversely affected party may appeal a final decision of the board to the district court within 30 days after issuance, in accordance with Iowa Code section 17A.19 as amended by 1998 Iowa Acts, chapter 1202.

4.35(2) *Review.* The board may initiate review of the decision or order on its own motion at any time within 30 days following the issuance of such a decision.

4.35(3) *Notice of appeal.* An appeal of a decision or order is initiated by filing a timely notice of appeal with the board. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.35(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 15 days of service of the notice of appeal. The board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.35(5) *Scheduling.* The board of nursing shall issue a schedule for consideration of the appeal.

4.35(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present an oral argument shall be filed with the briefs.

The board may resolve the appeal on the briefs or provide an opportunity for oral argument. The board may shorten or extend the briefing period as appropriate.

655—4.36(17A) Applications for rehearing.

4.36(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.36(2) *Content of application.* An application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, upon showing good cause, the applicant requests an opportunity to submit additional evidence.

4.36(3) *Time of filing.* The application shall be filed with the board office within 20 days after issuance of the final decision.

4.36(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

4.36(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

655—4.37(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable.

655—4.38(17A) Emergency adjudicative proceedings.

4.38(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the agency may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the agency by emergency adjudicative order. Before issuing an emergency adjudicative order the agency shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the agency is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

4.38(2) *Issuance.*

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.38(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.38(4) *Completion of proceedings.* Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and Iowa Code sections 147.55, 152.10, 272C.4, 272C.5, 272C.6, and 272C.9.

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SECRETARY OF STATE[721]

DIVISION I
ADMINISTRATION

CHAPTER 1
DESCRIPTION OF ORGANIZATION

1.1(17A)	Central organization
1.2(17A)	Corporations
1.3(17A)	Uniform Commercial Code
1.4(17A)	Elections
1.5(17A)	Land office
1.6(17A)	Notaries public
1.7(17A)	Legislative division—enrolled bills
1.8(17A)	Process agent
1.9(17A)	Oaths and bonds
1.10(17A)	Joint governmental agreements
1.11	Reserved
1.12(17A)	Judiciary

CHAPTER 2
RULES OF PRACTICE

2.1(17A)	Forms used
2.2(17A)	Filing complaints
2.3(17A)	Payment for services
2.4(17A)	Examination and preservation of records
2.5(17A)	Telecopier service

CHAPTER 3
ADMINISTRATIVE HEARINGS

3.1(17A)	Scope
3.2(17A)	Definitions
3.3(17A)	General information
3.4(17A)	Commencing the contested case
3.5(17A)	Notice of hearing
3.6(17A)	Contested case hearing procedures
3.7(17A)	Presiding officer
3.8(17A)	Decisions
3.9(17A)	Request for rehearing
3.10(17A)	Judicial review

CHAPTER 4
FORMS

4.1(17A)	Forms and instructions
4.2(17A)	Corporation forms
4.3(17A)	Election forms
4.4(17A)	Uniform Commercial Code forms
4.5(17A)	Verified lien statement forms
4.6(9A,17A)	Athlete agent

CHAPTER 5
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

5.1(17A,22)	Definitions
5.3(17A,22)	Requests for access to records
5.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
5.9(17A,22)	Disclosures without the consent of the subject
5.10(17A,22)	Routine use
5.11(17A,22)	Consensual disclosure of confidential records
5.12(17A,22)	Release to subject
5.13(17A,22)	Availability of records
5.14(17A,22)	Personally identifiable information
5.15(17A,22)	Personnel files
5.16(17A,22)	Other groups of records

CHAPTER 6
Reserved

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

7.1(17A)	Applicability
7.2(17A)	Advice on possible rules before notice of proposed rule adoption
7.3(17A)	Public rule-making docket
7.4(17A)	Notice of proposed rule making
7.5(17A)	Public participation
7.6(17A)	Regulatory analysis
7.7(17A,25B)	Fiscal impact statement
7.8(17A)	Time and manner of rule adoption
7.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
7.10(17A)	Exemptions from public rule-making procedures
7.11(17A)	Concise statement of reasons
7.12(17A)	Contents, style, and form of rule
7.13(17A)	Agency rule-making record
7.14(17A)	Filing of rules
7.15(17A)	Effectiveness of rules prior to publication
7.16(17A)	General statements of policy
7.17(17A)	Review by agency of rules

CHAPTER 8
PETITIONS FOR RULE MAKING

8.1(17A)	Petition for rule making
8.2(17A)	Briefs
8.3(17A)	Inquiries
8.4(17A)	Agency consideration

CHAPTER 9
DECLARATORY ORDERS

9.1(17A)	Petition for declaratory order
9.2(17A)	Notice of petition
9.3(17A)	Intervention
9.4(17A)	Briefs

9.5(17A) Inquiries
9.6(17A) Service and filing of petitions and other papers
9.7(17A) Consideration
9.8(17A) Action on petition
9.9(17A) Refusal to issue order
9.10(17A) Contents of declaratory order—effective date
9.11(17A) Copies of orders
9.12(17A) Effect of a declaratory order

CHAPTER 10
WAIVER AND VARIANCE RULES

10.1(17A) Definition
10.2(17A) Scope of chapter
10.3(17A) Applicability
10.4(17A) Criteria for waiver or variance
10.5(17A) Filing of petition
10.6(17A) Content of petition
10.7(17A) Additional information
10.8(17A) Notice
10.9(17A) Hearing procedures
10.10(17A) Ruling
10.11(17A) Public availability
10.12(17A) Summary reports
10.13(17A) Cancellation of a waiver
10.14(17A) Violations
10.15(17A) Defense
10.16(17A) Judicial review

CHAPTERS 11 to 19
Reserved

DIVISION II
ELECTIONS

CHAPTER 20
DEPUTY COMMISSIONERS OF ELECTIONS

20.1(47) Deputy secretary of state and deputy county auditor to act
20.2(47) County commissioner of elections may appoint special deputies

CHAPTER 21
ELECTION FORMS AND INSTRUCTIONS

DIVISION I
GENERAL ADMINISTRATIVE PROCEDURES

21.1(47) Emergency election procedures
21.2(47) Electronic submission of absentee ballot applications and affidavits of candidacy
21.3(49,48A) Voter identification documents
21.4(49) Changes of address at the polls
21.5(49) Eligibility declarations in the election register
21.6 Reserved
21.7(48A) Election day registration
21.8(48A) Notice to election day registrant
21.9(49) “Vote here” signs
21.10(43) Application for status as a political party
21.11 to 21.19 Reserved

21.20(62) Election contest costs
21.21(62) Limitations
21.22 to 21.24 Reserved
21.25(50) Administrative recounts
21.26 to 21.29 Reserved
21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans
21.31 to 21.49 Reserved
21.50(49) Polling place accessibility standards
21.51 to 21.74 Reserved
21.75(49) Voting centers for certain elections
21.76 to 21.199 Reserved

DIVISION II
BALLOT PREPARATION

21.200(49) Constitutional amendments and public measures
21.201(44) Competing nominations by nonparty political organizations
21.202(43,52) Form of primary election ballot
21.203(49,52) Form of general election ballot
21.204 to 21.299 Reserved

DIVISION III
ABSENTEE VOTING

21.300(53) Satellite absentee voting stations
21.301(53) Absentee ballot requests from voters whose registration records are "inactive"
21.302(48A) In-person absentee registration
21.303(53) Mailing absentee ballots
21.304(53) Absentee ballot requests from voters whose registration records are "pending"
21.305(53) Confirming commissioner's receipt of an absentee ballot on election day
21.306 to 21.319 Reserved
21.320(53) Absentee voting by UOCAVA voters
21.321 to 21.350 Reserved
21.351(53) Receiving absentee ballots
21.352(53) Review of returned affidavit envelopes
21.353(53) Opening the return carrier envelopes
21.354(53) Review process
21.355(53) Notice to voter
21.356 to 21.358 Reserved
21.359(53) Processing absentee ballots before election day
21.360(53) Failure to affix postmark date
21.361(53) Rejection of absentee ballot
21.362 to 21.399 Reserved

DIVISION IV
INSTRUCTIONS FOR SPECIFIC ELECTIONS

21.400(376) Signature requirements for certain cities
21.401(376) Signature requirements in cities with primary or runoff election provisions
21.402(372) Filing deadline for charter commission appointment petition
21.403(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections
21.404(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements
21.405 to 21.499 Reserved
21.500(277) Signature requirements for school director candidates
21.501 to 21.599 Reserved

21.600(43) Primary election signatures—plan three supervisor candidates
21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors
21.602(43) Primary election—nominations by write-in votes for certain offices
21.603 to 21.799 Reserved
21.800(423B) Local sales and services tax elections
21.801(423B) Form of ballot for local option tax elections
21.802(423B) Local vehicle tax elections
21.803(82GA,HF2663) Revenue purpose statement ballots
21.804 to 21.809 Reserved
21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding
21.811 to 21.819 Reserved
21.820(99F) Gambling elections
21.821 to 21.829 Reserved
21.830(357E) Benefited recreational lake district elections

CHAPTER 22
VOTING SYSTEMS

TESTING AND EXAMINATION OF VOTING EQUIPMENT

22.1(52) Definitions for certification of voting equipment
22.2(52) Voting system standards
22.3(52) Examiners
22.4(52) Fees and expenses paid to the examiners
22.5(52) Examination of voting equipment—application
22.6(52) Review of application by examiners
22.7(52) Consultant
22.8(52) Contact other users
22.9(52) Testing the equipment
22.10(52) Test primary election for three political parties
22.11(52) Test general election
22.12(52) Report of findings
22.13(52) Notification
22.14(52) Denial of certification
22.15(52) Application for reconsideration
22.16(52) Appeal
22.17(52) Changes to certified voting systems
22.18(52) Rescinding certification
22.19 to 22.29 Reserved
22.30(50,52) Electronic transmission of election results
22.31(52) Acceptance testing
22.32(52) Optical scan voting system purchase program
22.33 to 22.40 Reserved
22.41(52) Public testing of optical scan systems
22.42(52) Preparing test decks
22.43(52) Conducting the public test
22.44 to 22.49 Reserved
22.50(52) Voting system security
22.51(52) Memory cards
22.52(52) Voting equipment malfunction at the polls
22.53 to 22.99 Reserved

OPTICAL SCAN VOTING SYSTEMS

22.100 Reserved
22.101(52) Definitions
22.102(52) Optical scan ballots
22.103 to 22.199 Reserved

PRECINCT COUNT SYSTEMS

22.200(52) Security
22.201(52) Programming and testing the tabulating devices for precinct count systems
22.202 to 22.220 Reserved
22.221(52) Sample ballots and instructions to voters
22.222 to 22.230 Reserved
22.231(52) Emergency ballot box or bin
22.232(52) Manner of voting
22.233 to 22.239 Reserved
22.240(52) Results
22.241(52) Electronic transmission of election results
22.242 to 22.249 Reserved
22.250(52) Absentee voting instructions
22.251 to 22.259 Reserved
22.260(52) Specific precinct count systems
22.261(52) Election Systems & Software Model 100—preparation and use in elections
22.262(52) Premier Election Solutions' AccuVote OS and AccuVote OSX precinct count devices
22.263(52) AutoMARK Voter Assist Terminal (VAT)
22.264 to 22.339 Reserved

OPTICAL SCAN VOTING SYSTEM USED FOR ABSENTEE AND SPECIAL VOTERS PRECINCT

22.340(52) Processing
22.341(52) Reporting results from absentee ballots and provisional ballots
22.342(52) Tally list for absentee and special voters precinct
22.343(39A,53) Counting absentee ballots on the day before the general election

CHAPTER 23
VOTER REGISTRATION IN STATE AGENCIES

23.1(48A) Definitions
23.2(48A) Registration forms
23.3(48A) Declination forms
23.4(48A) Electronic declination records
23.5(48A) Retention and storage of declination forms
23.6(48A) Distribution of voter registration forms
23.7(48A) Applications, recertifications, renewals and changes of address received from applicant representatives
23.8(48A) Recertification and renewal applications
23.9(48A) Change of address notices
23.10(48A) Ineligible applicants
23.11(48A) Other voter registration agencies

CHAPTER 24
UNOFFICIAL CANVASS OF VOTES

24.1(47) Unofficial canvass
24.2(47) Duties of the county commissioner of elections
24.3(47) Duties of the state commissioner of elections

CHAPTER 25
ELECTION ADMINISTRATION—ADMINISTRATIVE COMPLAINT PROCEDURE

25.1(17A,39A,47) General provisions
25.2(17A,39A,47) Form of complaint
25.3(17A,39A,47) Filing, service, and initial review of complaint
25.4(17A,39A,47) Notice of proceedings
25.5(17A,39A,47) Informal settlement
25.6(17A,39A,47) Answer
25.7(17A,39A,47) Presiding officer
25.8(17A,39A,47) Proceedings based upon written submissions
25.9(17A,39A,47) Written decisions, available remedies
25.10(17A,39A,47) Hearings
25.11(17A,39A,47) Time requirements
25.12(17A,39A,47) Waiver of procedures
25.13(17A,39A,47) Telephone and electronic proceedings
25.14(17A,39A,47) Disqualification
25.15(17A,39A,47) Consolidation—severance
25.16(17A,39A,47) Service and filing of pleadings and other papers
25.17(17A) Discovery
25.18(17A) Issuance of subpoenas in a complaint proceeding
25.19(17A) Motions
25.20(17A) Continuances
25.21(17A) Withdrawals
25.22(17A) Intervention
25.23(17A) Hearing procedures
25.24(17A) Evidence
25.25(17A) Default
25.26(17A) Ex parte communication
25.27(17A) Recording costs
25.28(17A) Final decisions, publication and party notification
25.29(17A) Interlocutory appeals
25.30(17A) Appeals and review
25.31(17A) Applications for rehearing
25.32(17A) Stays of orders
25.33(17A) No factual dispute complaint proceedings
25.34(17A) Alternate dispute resolution
25.35(17A) Judicial review

CHAPTER 26
COUNTING VOTES

PART I—GENERAL PROVISIONS

26.1(49) Definitions
26.2(49) Counting votes on election day
26.3(50) Reporting overvotes and undervotes
26.4(50) Absentee and special voters precinct
26.5 to 26.9 Reserved

PART II—OPTICAL SCAN VOTING SYSTEMS

26.10(50) Systems affected
26.11(50) Examples used
26.12(50) Wrong ballots
26.13(50) Ballot properly marked by the voter

26.14(50) Ballots with identifying marks
26.15(49) Voter's choice
26.16(49) Determination of voter's choice
26.17(49) Marks not counted
26.18(49) Acceptable marks
26.19(49) Counting straight party or organization votes
26.20(49) Write-in votes
26.21(49) Corrections by voter
26.22 to 26.49 Reserved

PART III—PAPER BALLOTS

26.50(49) Standards
26.51(49) Write-in votes
26.52 to 26.59 Reserved

PART IV—VOTING MACHINES

26.60(49) Abandoned ballots
26.61(49) Counting emergency paper ballots
26.62 to 26.99 Reserved

PART V—RECOUNTS

26.100(50) Requester
26.101(50) Recounts for candidates who run as a team
26.102(50) Bond
26.103(50) Recount board
26.104(50) Responsibilities of the recount board
26.105(50) Duties of commissioner and commissioner's staff
26.106(50) Access to meeting
26.107(50) Report of the recount board

CHAPTER 27
HELP AMERICA VOTE ACT GRANTS

27.1(47,80GA,SF2298) Purpose
27.2(47,80GA,SF2298) Definitions
27.3(47,80GA,SF2298) Eligibility and requirements
27.4(47,80GA,SF2298) Application process
27.5(47,80GA,SF2298) Application contents
27.6(47,80GA,SF2298) Application review
27.7(47,80GA,SF2298) Award process
27.8(47,80GA,SF2298) Reports
27.9(47,80GA,SF2298) Access to records

CHAPTER 28
VOTER REGISTRATION FILE (I-VOTERS) MANAGEMENT

28.1(47,48A) State registrar's responsibility
28.2(48A) Access and fees
28.3(48A) Duplicate and multiple voter registration record deletion process
28.4(48A) Cancellations and restorations of voter registration due to felony conviction

CHAPTER 29
Reserved

DIVISION III
UNIFORM COMMERCIAL CODE

CHAPTER 30
UNIFORM COMMERCIAL CODE

30.1(554) General provisions
30.2(554) Acceptance and refusal of documents
30.3(554) UCC information management system
30.4(554) Filing and data entry procedures
30.5(554) Search requests and reports
30.6(554) Other notices of liens

CHAPTER 31
REGISTRATION OF POSTSECONDARY SCHOOLS

31.1(80GA,HF2559) Postsecondary registration fees

CHAPTERS 32 to 39
Reserved

DIVISION IV
CORPORATIONS

CHAPTER 40
CORPORATIONS

40.1(490,499,504A) Filing of documents
40.2(490,499,504A) Reinstatement of corporations
40.3(487,490,504A) Names distinguishable upon corporate records
40.4(490,491,496C,497,498,499,504A) Payment and refund of fees
40.5(491,496A,499,504A,548) Document to county recorder
40.6(548) Registration and protection of marks
40.7(80GA,SF2274) Revised nonprofit corporation Act fees

CHAPTER 41
Reserved

CHAPTER 42
ATHLETE AGENT REGISTRATION

42.1(9A,17A) Fees
42.2(9A,17A) Surety bond
42.3(9A,17A) Agent contract
42.4(9A,17A) General information

CHAPTER 43
NOTARIAL ACTS

43.1(9E) Certificate of notarial acts
43.2(9E) Short forms
43.3(9E) Notarial acts in other jurisdictions of the United States
43.4(9E) Notarial acts under federal authority
43.5(9E) Foreign notarial acts

CHAPTER 21
ELECTION FORMS AND INSTRUCTIONS
[Prior to 7/13/88, see Secretary of State(750), Ch 11]

DIVISION I
GENERAL ADMINISTRATIVE PROCEDURES

721—21.1(47) Emergency election procedures. The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

21.1(1) *Definitions.*

"Commissioner" means the county commissioner of elections.

"Election contest court" means any of the courts specified in Iowa Code sections 57.1, 58.4, 61.1, 62.1 and 376.10.

"Extremely inclement weather" means a natural occurrence, such as a rainstorm, windstorm, ice storm, blizzard, tornado or other weather conditions, which makes travel extremely dangerous or which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"Natural disaster" means a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"Other disaster" means an occurrence caused by machines or people, such as fire, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

"State commissioner" means the state commissioner of elections.

21.1(2) *Notice of natural or other disaster or extremely inclement weather.* The county commissioner of elections, or the commissioner's designee, may notify the state commissioner of elections that due to a natural or other disaster or extremely inclement weather an election cannot safely be conducted in the time or place for which the election is scheduled to be held. If the commissioner or the commissioner's designee is unable to transmit notice of the hazardous conditions, the notice may be given by any elected county official. Verification of the commissioner's agreement with the severity of the conditions and the danger to the election process shall be transmitted to the state commissioner as soon as possible. Notice may be given by telephone or by facsimile machine, but a signed notice shall also be delivered to the state commissioner.

21.1(3) *Declaration of emergency due to natural or other disaster or extremely inclement weather.* After receiving notice of hazardous conditions, the state commissioner of elections, or the state commissioner's designee, may declare that an emergency exists in the affected precinct or precincts. A copy of the declaration of the emergency shall be provided to the commissioner.

21.1(4) *Emergency modifications to conduct of elections.* When the state commissioner of elections has declared that an emergency exists due to a natural or other disaster or to extremely inclement weather, the county commissioner of elections, or the commissioner's designee, shall consult with the state commissioner to develop a plan to conduct the election under the emergency conditions. All modifications to the usual method for conducting elections shall be approved in advance by the state commissioner unless prior approval is impossible to obtain.

Modifications may be made to the method for conducting the election including relocation of the polling place, postponement of the hour of opening the polls, postponement of the date of the election if no candidates for federal offices are on the ballot, reduction in the number of precinct election officials in nonpartisan elections, or other reasonable and prudent modifications that will permit the election to be conducted.

21.1(5) *Relocation of polling place.* The substitute polling place shall be as close as possible to the usual polling place and shall be within the same precinct if possible. Preference shall be given to buildings which are accessible to the elderly and disabled. Buildings supported by taxation shall be made available without charge by the authorities responsible for their administration. If it is necessary, more than one precinct may be located in the same room.

A notice of the location of the substitute polling place shall be posted on the door of the former polling place not later than one hour before the scheduled time for opening the polls or as soon as possible. If it is unsafe or impossible to post the sign on the door of the former polling place, the notice shall be posted in some other visible place at or near the site of the former polling place. If time permits, notice of the relocation of the polling place shall be published in the same newspaper in which notice of election was published, otherwise notice of relocation may be published in any newspaper of general circulation in the political subdivision which will appear on or before election day. The commissioner shall inform all broadcast media and print news organizations serving the jurisdiction of the modifications.

21.1(6) *Postponement of election.* An election, other than an election at which a federal office appears on the ballot, may be postponed until the following Tuesday. If the election involves more than one precinct, the postponement must include all precincts within the political subdivision. If the election is postponed, ballots shall not be reprinted to reflect the modification in the election date. The date of the close of voter preregistration by mail for the election shall not be extended. Precinct election registers prepared for the original election date may be used or reprinted at the commissioner's discretion.

On the day that the postponed election is actually held, all election day procedures must be repeated.

21.1(7) *Absentee voting in postponed elections.* Absentee ballots shall be delivered to voters pursuant to Iowa Code section 53.22 until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled. However, if absentee ballots have been tabulated before the election is postponed, the absentee ballots shall be sealed in an envelope by the absentee and special voters precinct board and stored securely until the date the election is actually held. The sealed envelopes shall be opened by the absentee and special voters precinct board on the date the election is actually held, counters on the tabulating equipment (if any) shall be reset to zero, and all absentee ballots tabulated on the original election date shall be retabulated.

21.1(8) *Absentee and special voters precinct board in postponed elections.* The absentee and special voters precinct board shall meet to consider provisional ballots at the times specified in Iowa Code sections 50.22 and 52.23, calculated from the date the election is held. No absentee ballots shall be counted until the date the election is held.

21.1(9) *Canvass of votes in postponed elections.* The canvass of votes shall also be rescheduled for one week after the originally scheduled canvass date.

21.1(10) *Postponements made on election day.* If the emergency is declared while the polls are open and the decision is made to postpone the election, each precinct polling place in the political subdivision shall be notified to close its doors and to halt all voting immediately. People present in the polling place who are waiting to vote shall not be given ballots. People who have received and marked their ballots shall deposit them in the ballot box; unmarked ballots may be returned to the precinct election officials.

The precinct election officials shall seal all ballots which were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the commissioner's office. The ballots shall be stored in a secure place. If it is unsafe to travel to the commissioner's office, the chairperson of the precinct election board shall see that the ballots and the election register are securely stored until it is safe to return them to the commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened, sealed ballot containers shall be destroyed.

If automatic tabulating equipment is used, the automatic tabulating equipment shall be closed and sealed without printing the results. Before the date the election is held, the automatic tabulating equipment shall be reset to zero. Documents showing the progress of the count, if any, shall be sealed in an envelope and stored. No one shall reveal the progress of the count. After six months, the sealed envelope containing the vote totals shall be destroyed if no contest is pending.

21.1(11) *Records kept.* The state commissioner of elections shall maintain records of each emergency declaration. The records of emergency declarations for federal elections shall be kept for 22 months, and records for all other elections shall be kept for six months following the election. The records shall include the following information:

a. The county in which the emergency occurred.

b. The date and time the emergency declaration was requested.

c. The name and title of the person making the request.

d. Name and date of the election affected.

e. The jurisdiction for which the election is to be conducted (school, city, county, or other).

f. The number of precincts in the jurisdiction.

g. The number of precincts affected by the emergency.

h. The nature of the emergency, i.e., natural or other disaster, or extremely inclement weather.

i. The date or dates of the occurrence of the natural or other disaster or extremely inclement weather.

j. Conditions affecting the conduct of the election.

k. Whether the polling places may safely be opened on time.

l. Action taken: such as moving the polling place, change voting system, postpone election until the following Tuesday.

m. Method to be used to inform the public of changes made in the election procedure.

n. The signature of the state commissioner or the state commissioner's designee who was responsible for declaring the emergency.

21.1(12) *Federal elections.*

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

21.1(13) *Military emergencies.* A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

21.1(14) *Election contest emergency.* If an election contest court finds that there were errors in the conduct of an election which make it impossible to determine the result of the election, the contest court shall notify the state commissioner of elections of its finding. The state commissioner shall order a repeat

election to be held. The repeat election date shall be set by the state commissioner. The repeat election shall be conducted under the state commissioner's supervision.

The repeat election shall be held at the earliest possible time, but it shall not be held earlier than 14 days after the date the election was set aside. Voter registration, publication, equipment testing and other applicable deadlines shall be calculated from the date of the repeat election.

The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election may be replaced at the discretion of the auditor.

The following materials prepared for the original election shall be used or reconstructed for the repeat election:

Ballots (showing the date of repeat election). This may be stamped on ballots printed for the original election.

Notice of election (showing the date of repeat election).

This rule is intended to implement Iowa Code section 47.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.2(47) Electronic submission of absentee ballot applications and affidavits of candidacy. Absentee ballot applications and affidavits of candidacy may be submitted electronically using either fax or E-mail.

21.2(1) *Electronic copies of absentee ballot applications and affidavits of candidacy accepted for filing.* Assuming that all other legal requirements are met, absentee ballot applications and affidavits of candidacy required by Iowa Code chapters 43, 44, 45, 161A, 260C, 277, 376 and 420 may be submitted electronically by either fax or E-mail if presented to the appropriate filing officer as an exact copy of the original and if the submission is in compliance with subrule 21.2(2).

21.2(2) *Original absentee ballot applications.* The original absentee ballot application submitted electronically shall also be mailed to the commissioner. The envelope bearing the original absentee ballot application shall be postmarked not later than the Friday before the election. This subrule shall not apply to documents submitted electronically by UOCAVA voters pursuant to rule 721—21.320(53).

a. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the original absentee ballot application filed electronically is not received in the mail by the time the polls close on election day.

b. The voter's absentee ballot shall be rejected by the absentee and special voters precinct board if the postmark on the envelope containing the original absentee ballot application is later than the Friday before the election.

21.2(3) *Original affidavits of candidacy.* The original copy of an affidavit of candidacy submitted electronically shall also be filed with the appropriate commissioner. The envelope bearing the original affidavit (if any) shall be postmarked not later than the last day to file the document.

a. The filing shall be void if the original affidavit of candidacy filed electronically is not received within seven days after the filing deadline for the original affidavit of candidacy.

b. The filing shall be void if the postmark on the envelope containing the original affidavit of candidacy is later than the filing deadline.

c. If an affidavit of candidacy filing is voided because the original affidavit of candidacy submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

This rule is intended to implement Iowa Code sections 43.11, 43.19, 43.54, 43.67, 43.78, 44.3, 45.3, 45.4, 46.20, 47.1, and 47.2; sections 53.2, 53.8, 53.17, 53.22, 53.25, and 53.40 as amended by 2009 Iowa Acts, House File 475; sections 53.45, 61.3, 161A.5, and 277.4; sections 260C.15 and 376.4 as amended by 2009 Iowa Acts, House File 475; and sections 376.11 and 420.130.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.3(49,48A) Voter identification documents.

21.3(1) *Identification documents for persons other than election day registrants.* Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the identification documents listed in Iowa Code section 48A.8 from any person who is asked or required to present identification pursuant to Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

21.3(2) *Identification for election day registrants.*

a. A person who applies to register to vote on election day shall provide proof of identity and residence pursuant to Iowa Code section 48A.7A in the precinct where the person is applying to register and vote.

b. Any registered voter who attests for another person registering to vote at the polls on election day shall be a registered voter of the same precinct. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

21.3(3) *Current and valid identification.*

a. "Current and valid" or "identification," for the purposes of this rule, means identification that meets the following criteria:

(1) The expiration date on the identification has not passed. An identification is still valid on the expiration date. An Iowa nonoperator's identification that shows "none" as the expiration date shall be considered current and valid.

(2) The identification has not been revoked or suspended.

b. A current and valid identification may include a former address.

21.3(4) *Identification not provided.* A person who has been requested to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to Iowa Code section 48A.7A may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct.

This rule is intended to implement Iowa Code section 48A.7A and section 49.77 as amended by 2009 Iowa Acts, House File 475, and P.L. 107-252, Section 303.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.4(49) Changes of address at the polls. An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

21.4(1) To qualify to vote in the election being held that day, the voter shall:

a. Go to the polling place for the precinct where the voter lives on election day.

b. Complete a registration form showing the person's current address in the precinct.

c. Present proof of identity as required by subrule 21.3(1).

21.4(2) The officials shall require a person who is reporting a change of address at the polls to cast a provisional ballot if the person's registration in the county cannot be confirmed. Registration may be confirmed by:

a. Telephoning the office of the county commissioner of elections, or

b. Reviewing a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or

c. Researching the county's voter registration records using a computer.

21.4(3) In precincts where the voter's declaration of eligibility is included in the election register pursuant to rule 721—21.5(49) and Iowa Code section 49.77, the commissioner shall provide to each precinct one of the two following methods for recording changes of address:

a. The voter shall be given both an eligibility declaration and a voter registration form. The eligibility declaration may be printed on the same piece of paper as the voter registration form.

b. The commissioner shall provide blank lines on the election register for the precinct election officials to record the voter's name, address, and, if provided, telephone number, and, in primary

elections, political party affiliation. The voter shall sign the election register next to the printed information. The voter shall also complete a voter registration form showing the voter's current address.

This rule is intended to implement Iowa Code section 49.77 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.5(49) Eligibility declarations in the election register. To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If a multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.6(43,50) Turnout reports. Rescinded IAB 6/2/10, effective 7/1/10.

721—21.7(48A) Election day registration. In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

21.7(1) Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

a. The photograph shows the person who is registering to vote.

b. The name on the identification document is the same as the name of the applicant.

c. The address on the identification document is in the precinct where the person is registering to vote.

21.7(2) Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the election register that the person has attested for an election day registrant.

21.7(3) Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

21.7(4) In precincts where an electronic program is not used to check the name of an election day registrant against the statewide list of felons who have had their right to vote revoked, precinct election officials shall provide each election day registrant with a "Notice to Election Day Registrants" prepared by the state commissioner before allowing the voter to register and vote on election day. The "Notice to Election Day Registrants" prepared by the state commissioner will be posted on the state commissioner's Web site.

This rule is intended to implement 2007 Iowa Acts, House File 653.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8777B**, IAB 6/2/10, effective 5/7/10]

721—21.8(48A) Notice to election day registrant. The commissioner shall send to each person who registers to vote on election day, pursuant to Iowa Code section 48A.7A, an acknowledgment of the registration by nonforwardable mail. If the postal service returns the acknowledgment as undeliverable, the commissioner shall send a notice to the voter by forwardable mail. The notice shall be substantially in the form titled "Notice to Election Day Registrant" posted on the state commissioner's Web site.

This rule is intended to implement Iowa Code sections 48A.7A and 48A.26A.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.9(49) "Vote here" signs.

1. Size. The signs shall be no smaller than 16 inches by 24 inches.

2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a "vote here" sign at the driveway entrance would not help potential voters find the voting area, no "vote here" sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21.

721—21.10(43) Application for status as a political party. A political organization which is not currently qualified as a political party may file an application for determination of political party status with the state commissioner of elections. The application may be filed after the completion of the executive council's canvass of votes for the general election, but not later than one year after the date of the election at which the organization's candidate for President of the United States or governor received at least 2 percent of the vote.

21.10(1) *Application form.* The application shall be substantially in the form titled "Application for Political Party Status" posted on the state commissioner's Web site.

21.10(2) *Response.* If the political organization meets the requirements established in Iowa Code section 43.2, the commissioner shall declare that the organization has qualified as a political party, effective 21 days after the application is approved. If the organization does not meet the requirements, the state commissioner shall immediately notify the applicant in writing of the reason for the rejection of the application.

21.10(3) *Disqualification of political party.* If at the close of nominations for the general election a political party has not nominated a candidate for the office of President of the United States, or for governor, as the case may be, the political party shall be disqualified immediately.

If the candidate of a political party for President of the United States or for governor, as the case may be, does not receive 2 percent of the votes cast for that office at a general election, the political party shall be disqualified. The effective date of the disqualification shall be the date of the completion of the state canvass of votes.

When a political party is disqualified, the state commissioner shall immediately notify the chairperson or central committee of the disqualified political party.

21.10(4) *Notice of qualification and disqualification of political parties.* The state commissioner of elections shall immediately notify the state registrar of voters, the voter registration commission, and the county commissioners of elections when a political party is qualified or disqualified. The notice shall include the name of the political party and the date upon which change in political party status becomes effective.

The state commissioner of elections shall also publish notice of the qualification or disqualification of a political party in a newspaper of general circulation in each congressional district. The publication shall be made within 30 days of the approval of an application for qualification or within 30 days of the effective date of a disqualification.

This rule is intended to implement Iowa Code sections 43.2 and 47.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.11(44) Nonparty political organizations—nominations by petition. Rescinded IAB 9/10/97, effective 10/15/97.

721—21.12 to **21.19** Reserved.

721—21.20(62) Election contest costs. In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

721—21.21(62) Limitations. The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any

potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

721—21.22 to **21.24** Reserved.

721—21.25(50) Administrative recounts. When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount. The board of supervisors shall respond as soon as possible after receipt of the commissioner's request.

The recount shall be conducted by members of the absentee and special voters precinct board following the provisions of Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, Iowa Code section 50.49 and 721—Chapter 26. The commissioner may use different memory cards for the recount and shall retain the information on the memory cards used in the election pursuant to 721—subrule 22.51(13). The commissioner may also use different election definition files if the commissioner believes the original election definition files were flawed. If the commissioner uses different election definition files for the recount, the commissioner shall also retain the election definition files for the election as required by 721—subrule 22.51(14).

This rule is intended to implement Iowa Code section 50.48 as amended by 2009 Iowa Acts, House File 475, and Iowa Code section 50.49.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.26 to **21.29** Reserved.

721—21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans. If a city has annexed territory after January 1 of a year ending in zero and before the completion of the redrawing of precinct and ward boundaries during a year ending in one, the city shall include the annexed land in precincts drawn pursuant to Iowa Code sections 49.3 and 49.5.

21.30(1) When the city council draws precinct and ward boundaries, if any, the city shall use the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(2) When the board of supervisors, or the temporary county redistricting commission, draws precinct and county supervisor district boundaries, if any, it shall subtract from the population of the adjacent unincorporated area the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(3) The use of population figures for reprecincting or redistricting shall not affect the official population of the city or the county. Only the U.S. Bureau of the Census may adjust the official population figures, by corrections or by conducting special censuses. See Iowa Code section 9F.6.

This rule is intended to implement Iowa Code sections 49.3 and 49.5.

721—21.31 to **21.49** Reserved.

721—21.50(49) Polling place accessibility standards.

21.50(1) *Inspection required.* Before any building may be designated for use as a polling place, the county commissioner of elections or the commissioner's designee shall inspect the building to determine whether it is accessible to persons with disabilities.

21.50(2) *Frequency of inspection.* Polling places that have been inspected using the Polling Place Accessibility Survey Form prescribed in subrule 21.50(4) shall be reinspected if structural changes are made to the building or if the location of the polling place inside the building is changed.

21.50(3) *Review of accessibility.* Not less than 90 days before each primary election, the commissioner shall determine whether each polling place needs to be reinspected.

21.50(4) *Standards for determining polling place accessibility.* The survey form available on the state commissioner's Web site titled "Polling Place Accessibility Survey" shall be used to evaluate polling places for accessibility to persons with disabilities.

The term "off-street parking" used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

21.50(5) *Temporary waiver of accessibility requirements.* Notwithstanding the waiver provisions of 721—Chapter 10, if the county commissioner is unable to provide an accessible polling place for any precinct, the commissioner shall apply for a temporary waiver of accessibility requirements pursuant to this subrule. Applications shall be filed with the secretary of state not later than 60 days before the date of any scheduled election. If a waiver is granted, it shall be valid for two years from the date of approval by the secretary of state.

a. Each application shall include the following documents:

(1) Application for Temporary Waiver of Accessibility Requirements.

(2) A copy of the Polling Place Accessibility Survey Form for the polling place to be used.

(3) A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for the precinct.

b. If an accessible place becomes available at least 30 days before an election, the commissioner shall change polling places and shall notify the secretary of state. The notice shall include a copy of the Polling Place Accessibility Survey Form for the new polling place.

21.50(6) *Emergency waivers.* During the 60 days preceding an election, if a polling place becomes unavailable for use due to fire, flood, or changes made to the building, or for other reasons, the commissioner must apply for an emergency waiver of accessibility requirements in order to move the polling place to an inaccessible building. Emergency waiver applications must be filed with the secretary of state as soon as possible before election day. To apply for an emergency waiver, the commissioner shall send the following documents:

a. Application for Temporary Waiver of Accessibility Requirements.

b. A copy of the Polling Place Accessibility Survey Form for the polling place selected.

c. A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for this precinct (if any).

21.50(7) *Application form.* The form posted on the state commissioner's Web site titled "Temporary Waiver of Accessibility Requirements" shall be used to apply for a temporary waiver of accessibility requirements.

21.50(8) *Evaluation of waivers.* When the secretary of state receives waiver applications, the applications shall be reviewed carefully. A response shall be sent to the commissioner within one week by E-mail or by fax to notify the commissioner when the waiver request was received and whether additional information is needed.

21.50(9) *Granting waivers.* If the secretary of state determines from the documents filed with the waiver request that conditions justify the use of a polling place that does not meet accessibility standards, the secretary of state shall grant the waiver of accessibility requirements. If the secretary of state determines from the documents filed with the waiver request that all potential polling places have been surveyed and no accessible place is available, and the available building cannot be made temporarily accessible, the waiver shall be granted.

21.50(10) *Notice required.* Each notice of election published pursuant to Iowa Code section 49.53 shall clearly describe which polling places are inaccessible. The notice shall include a description of the services available to persons with disabilities who live in precincts with inaccessible polling places. The notice shall be in substantially the following form:

Any voter who is physically unable to enter a polling place has the right to vote in the voter's vehicle. For further information, please contact the county auditor's office at the telephone or TTY number or E-mail address listed below:

Telephone: _____ TTY: _____ E-mail address: _____

21.50(11) *Denial of waiver requests.* The secretary of state shall review each waiver request. The secretary of state shall consider the totality of the circumstances as shown by the information on the waiver request, information contained in previous applications for waivers for the same precinct and for other precincts in the county, and other relevant available information. The waiver request may be denied if it appears that the commissioner has not made a good-faith effort to find an accessible polling place. If the waiver request is denied, the secretary of state shall notify the commissioner in writing of the reason for denying the request.

This rule is intended to implement Iowa Code section 49.21.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.51 to **21.74** Reserved.

721—21.75(49) Voting centers for certain elections. The commissioner may establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

21.75(1) *Definition.*

"Voting center" means a location established by the commissioner for the purpose of providing ballots to all registered voters who are qualified to vote in a particular jurisdiction for a regular city election, city primary election, city runoff election, regular school election, or special election.

21.75(2) *Minimum requirements.*

a. Establishment. One or more voting centers may be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted. Regular polling place sites that are accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used.

b. Location of voting centers. If voting centers are established for an election, at least one voting center must be located within the boundaries of the political subdivision for which the election is being conducted. At the commissioner's discretion, additional vote centers may be established as long as the voting center is located within the boundaries of the political subdivision for which the election is being conducted.

c. Accessibility. A voting center is subject to the requirements of Iowa Code section 49.21 relating to accessibility to persons who are elderly and persons with disabilities and relating to the posting of signs.

21.75(3) *Hours.* Voting center hours shall be the same as permitted for an election pursuant to Iowa Code section 49.73.

21.75(4) *Publications.* The location of each voting center shall be published in the notice of election by the commissioner in the same manner as the location of polling places is required to be published. The notice of election shall also include a description of the voting center in substantially the following form:

For the _____ election to be held on [date], voting centers will be available. Any registered voter of [jurisdiction name] may vote at any of the following places in this election:

[List addresses of voting centers.]

21.75(5) *Posting notices at regular polling places on election day.* If voting centers are established in lieu of regular polling places for an election, the commissioner shall post a notice of voting center

locations, not later than the hour at which the polls open on the day of the election, on each door to the usual polling place in the precinct. The notice shall remain posted until the polls have closed.

21.75(6) *I-Voters use prohibited.* The commissioner shall not provide direct access from voting centers to the I-Voters system on election day.

21.75(7) *Determining ballot rotations.* For the purposes of determining ballot rotations pursuant to Iowa Code section 49.31 in an election for which the commissioner has established voting centers, the commissioner may use either precincts established pursuant to Iowa Code sections 49.3 to 49.5 or consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a."* If the commissioner uses consolidated precincts established pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a,"* the commissioner shall use the same consolidated precincts used in the last regularly scheduled election conducted for the political subdivision in which voting centers were not used.

21.75(8) *Operation of voting centers.*

a. *Election registers and voter lists.* Each voting center shall have an election register containing the names, addresses and voter statuses of all registered voters who are eligible to vote in that election. The election register may be a paper list or may be available on computers in an electronic format, rather than as an interactive connection to I-Voters.

b. *Election day registration at voting centers.* A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction served by the voting center.

c. *Voters reporting address changes at voting centers.* Any person who is already registered in the county and updates the person's voter registration address at a voting center shall show identification listed in Iowa Code section 48A.8. Persons unable to provide requested identification shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

d. *Ballots.* Each voting center shall have all ballot styles necessary to provide a ballot to any voter who is eligible to vote in the election for the jurisdiction served by the voting center.

e. *Precinct election officials.* Voting centers shall be administered by a minimum of three precinct election officials selected pursuant to Iowa Code sections 49.12 to 49.16. These officials shall be trained before each election and shall have specific instructions regarding the differences between voting centers and polling places.

f. *Ballot boxes used with optical scan voting equipment at voting centers.* The commissioner may instruct two precinct election officials not of the same political party to open the ballot box periodically throughout election day to ensure the ballots are stacking evenly in the ballot box to prevent a voting equipment malfunction. The precinct election officials charged with inspecting the ballot box shall ensure the ballot box is locked and secured at all times. As an alternative to this procedure, the commissioner may supply any voting center with additional ballot boxes and the precinct election officials may move the optical scan voting equipment to a new ballot box if necessary. All ballot boxes containing voted ballots shall be locked and secured by the precinct election officials at all times.

21.75(9) *Postelection review of voter participation.*

a. Within 45 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

b. The notice to the county attorney shall include a copy of the person's voter registration record and copies of the declarations of eligibility signed by the voter. The notice shall also include a reference to Iowa Code sections 39A.2(2) and 49.11(3)*"b."*

This rule is intended to implement Iowa Code sections 49.9 and 49.11.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.76 to **21.199** Reserved.

DIVISION II
BALLOT PREPARATION

721—21.200(49) Constitutional amendments and public measures.

21.200(1) The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

a. The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?".

b. The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

21.200(2) The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

a. The letter assigned by the commissioner shall be printed on the ballot at least ⅛ of an inch high in the designated place.

b. Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

21.200(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

a. Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.201(44) Competing nominations by nonparty political organizations.

21.201(1) *Nominations by convention and by petitions.* If one or more nomination petitions are received from nonparty political organization candidates for an office for which the same organization has also nominated one candidate by convention, the candidate nominated by convention shall be considered the nominee of the organization. The names of the other candidates shall appear on the ballot as candidates "nominated by petition," and those candidates shall be notified in writing not later than seven days after the close of the filing period.

21.201(2) *Multiple nomination petitions.* If nomination petitions are received from more than one candidate from the same nonparty political organization for the same office and the organization has not nominated a candidate for the office by convention, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and

placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates shall appear on the ballot as candidates "nominated by petition." A copy of the written record of the result of the drawing shall be kept with the nomination petition of each affected candidate, and each candidate shall be sent a copy for the candidate's records not later than seven days after the close of the filing period.

21.201(3) *Multiple nomination certificates.* If more than one nomination certificate is received for the same office from groups with the same nonparty political organization name, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates, including any candidate who filed nomination petitions, shall appear on the ballot as candidates "nominated by petition." A copy of the written record of the result of the drawing shall be kept with the nomination certificate of each affected candidate, and each candidate shall be sent a copy for the candidate's records not later than seven days after the close of the filing period.

This rule is intended to implement Iowa Code section 44.17.

721—21.202(43,52) Form of primary election ballot. All primary election ballots shall meet the following formatting requirements:

21.202(1) *Required information.* In addition to other requirements listed in the Iowa Code, primary election ballots shall also include the following information:

a. The name of the election.

b. The name of the party, which shall be printed at the top of the ballot in at least 24-point type.

c. The name of the county.

d. Instructions for how to mark the ballot.

21.202(2) *Headings and lines.* Federal offices, state offices and county offices printed on the ballot shall be preceded by a heading identifying the offices as "Federal Offices," "State Offices," and "County Offices." Each heading shall be separated from the previous section of the ballot by a distinct line.

21.202(3) *Office titles and order of offices.* Each office printed on the ballot shall be preceded by an office title. The order of offices on the primary election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles on the primary election ballot shall be listed as follows:

(1) U.S. Senator (if any).
(2) U.S. Representative, District ___.
(3) Governor.
(4) Secretary of State.
(5) Auditor of State.
(6) Treasurer of State.
(7) Secretary of Agriculture.
(8) Attorney General.
(9) State Senator, district ___ (if any).
(10) State Representative, District ___.
(11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).
(12) Treasurer.
(13) Recorder.

(14) County Attorney.

b. In presidential election years, the order of office titles on the primary election ballot shall be listed as follows:

(1) U.S. Senator (if any).

(2) U.S. Representative, District ___.

(3) State Senator, District ___ (if any).

(4) State Representative, District ___.

(5) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).

(6) Auditor.

(7) Sheriff.

c. If an office is printed on the primary election ballot followed by the words "To Fill Vacancy," that office shall be listed after the other offices under the appropriate heading. If the office followed by the words "To Fill Vacancy" is the board of supervisors, that office shall appear after the other board of supervisors office(s).

21.202(4) *Vote for number.* Under each office title, the number of choices a voter may make in the race shall be printed in the following form: "Vote for no more than ___." The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election.

21.202(5) *Write-in vote targets.* After the candidates' names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.202(4). Under each write-in line, the following words shall be printed: "Write-in vote, if any."

21.202(6) *Font size.* Candidates' names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

21.202(7) *Two-sided ballots.* If a primary election ballot must be printed on two sides, the words "Turn the ballot over" shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement 2009 Iowa Code Supplement section 43.31 [2009 Iowa Acts, House File 475, section 6].

[**ARC 8698B**, IAB 4/21/10, effective 6/15/10]

721—21.203(49,52) Form of general election ballot. All general election ballots shall meet the following formatting requirements:

21.203(1) *Required information.* In addition to other requirements listed in the Iowa Code, general election ballots shall also include the following information:

a. The name of the election.

b. The name of the county.

c. Instructions for how to mark the ballot, including instructions for voting on judicial retentions and constitutional amendments or public measures and instructions for straight-party voting.

d. Ballot location of the judges' names and any constitutional amendment(s).

21.203(2) *Headings and lines.* Straight-party voting, other political organizations, federal offices, state offices, county offices, judges and public measures printed on the ballot shall be preceded by a heading identifying the sections, offices or questions as "Straight Party Voting," "Other Political Organizations," "Federal Offices," "State Offices," "County Offices," "Judges," and "Public Measures." Each heading shall be separated from the previous section of the ballot by a distinct line.

21.203(3) *Office titles, order of offices and public measures.* Each office printed on the ballot shall be preceded by an office title. The order of offices and public measures listed on the general election ballot shall be as follows:

a. In gubernatorial election years, the order of office titles and public measures on the general election ballot shall be listed as follows:

(1) U.S. Senator (if any).

(2) U.S. Representative, District ___.

(3) Governor and Lt. Governor.

(4) Secretary of State.

(5) Auditor of State.
(6) Treasurer of State.
(7) Secretary of Agriculture.
(8) Attorney General.
(9) State Senator, District ___ (if any).
(10) State Representative, District ___.
(11) Board of Supervisors (if plan II or plan III, then Board of Supervisors, District ___).
(12) Treasurer.
(13) Recorder.
(14) County Attorney.
(15) Township Trustee (if any).
(16) Township Clerk (if any).
(17) County Public Hospital Trustee (if any).
(18) Soil and Water Conservation District Commissioner.
(19) County Agricultural Extension Council Member.
(20) Other nonpartisan offices (if any).
(21) Supreme Court Justice (if any).
(22) Court of Appeals Judge (if any).
(23) District Court Judge (if any).
(24) District Court Associate Judge (if any).
(25) Associate Juvenile Judge (if any).
(26) Associate Probate Judge (if any).
(27) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:
1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

b. In presidential election years, the order of office titles on the general election ballot shall be listed as follows:
(1) President and Vice President.
(2) U.S. Senator (if any).
(3) U.S. Representative, District ___.
(4) State Senator, District ___ (if any).
(5) State Representative, District ___.
(6) Board of Supervisors (if plan II or plan III, then Board of Supervisors, district ___).
(7) Auditor.
(8) Sheriff.
(9) Township Trustee (if any).
(10) Township Clerk (if any).
(11) County Public Hospital Trustee (if any).
(12) Soil and Water Conservation District Commissioner.
(13) County Agricultural Extension Council Member.
(14) Other nonpartisan offices (if any).
(15) Supreme Court Justice (if any).
(16) Court of Appeals Judge (if any).
(17) District Court Judge (if any).
(18) District Court Associate Judge (if any).
(19) Associate Juvenile Judge (if any).
(20) Associate Probate Judge (if any).
(21) Public Measures (if any). Under the public measures heading, measures shall be listed in the following order:

1. Constitutional Amendment (if any).
2. State Public Measure (if any).
3. County Public Measure (if any).
4. City Public Measure (if any).

c. If an office is printed on the general election ballot followed by the words "To Fill Vacancy," that office shall be listed after the other offices under the appropriate heading. If the office followed by the words "To Fill Vacancy" is the board of supervisors, that office shall appear after the other board of supervisors office(s).

21.203(4) *Vote for number.* Under each office title, the number of choices a voter may make in the race shall be printed in the following form: "Vote for no more than ___". The number of choices the voter may make for each race is the number of individuals to be elected to the office at the general election. Under the "President and Vice President" office title, "Vote for no more than one team" shall be printed on the ballot. Under the "Governor and Lt. Governor" office title, "Vote for no more than one team" shall be printed on the ballot.

21.203(5) *Write-in vote targets.* After the candidates' names for each office (if any), a target shall be placed next to a line for voters to write in a nominee for the office. The number of write-in targets and lines printed under each office shall match the vote for number referenced in subrule 21.203(4). Under each write-in line, the following words shall be printed: "Write-in vote, if any". For the offices of President and Vice President, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: "Write-in vote for President, if any" and "Write-in vote for Vice President, if any". For the offices of governor and lieutenant governor, there shall be one write-in target printed to the left of two write-in lines. Under the write-in lines, the commissioner shall print the following: "Write-in vote for Governor, if any" and "Write-in vote for Lt. Governor, if any".

21.203(6) *Font size.* Candidates' names shall be printed in upper and lower case letters, and the font size shall be no less than 10-point type.

21.203(7) *Two-sided ballots.* If a general election ballot must be printed on two sides, the words "Turn the ballot over" shall be printed on both sides of the ballot, at the bottom.

This rule is intended to implement 2009 Iowa Code Supplement section 49.57A [2009 Iowa Acts, House File 475, section 32].

[**ARC 8698B**, IAB 4/21/10, effective 6/15/10]

721—21.204 to **21.299** Reserved.

DIVISION III
ABSENTEE VOTING

721—21.300(53) Satellite absentee voting stations.

21.300(1) *Establishment of stations.* Satellite absentee voting stations may be established by the county commissioner of elections or by a petition of eligible electors of the jurisdiction conducting the election.

a. Satellite absentee voting stations established by the county commissioner. The county commissioner of elections may designate locations in the county for satellite absentee voting stations. Satellite absentee voting stations established by the commissioner shall be accessible to elderly and disabled voters. Satellite absentee voting stations must also be established so as to provide for voting in secret and ballot security.

b. Satellite absentee voting stations established after receipt of a valid petition. A petition requesting a satellite absentee voting station shall be substantially in the form titled "Petition Requesting Satellite Absentee Voting Station" available on the state commissioner's Web site. If the commissioner receives a petition requesting a satellite absentee voting station on or before the petition deadline set forth in Iowa Code section 53.11, the commissioner shall determine the validity of the petition within 24 hours. A petition requesting a satellite absentee voting station is valid if it contains signatures of not less than 100 eligible electors of the jurisdiction conducting the election. Electors signing the petition

must include their signature, house number, street, and date the petition was signed. Signatures on lines not containing all of the required information shall not be counted. The heading on each page of the petition shall include the satellite location requested and the election name or date for which the location is requested. Signatures on petition pages without the required heading shall not be counted.

c. *Mandatory rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations shall be rejected within four days of the commissioner's receipt of the petition if:

(1) The site requested is not accessible to elderly and disabled voters,

(2) The site requested has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or

(3) The owner of the site refuses permission to locate the satellite absentee voting station at the site requested on the petition.

d. *Discretionary rejection of certain satellite absentee voting stations.* Otherwise valid petitions for satellite absentee voting stations may be rejected within four days of the commissioner's receipt of the petition if:

(1) A petition is received requesting satellite voting for a city runoff election and a special election is scheduled to be held between the regular city election and a city runoff election.

(2) The owner of the site demands payment for its use.

e. *Provision of ballots.* Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. Ballots must be provided for the precinct in which the satellite absentee voting station is located; however, it is not necessary to provide ballots from all of the precincts in the political subdivision for which the election is being conducted.

21.300(2) *Notice provided.* Notice shall be published at least seven days before the opening of any satellite absentee voting station. If more than one satellite absentee voting station will be provided, a single publication may be used to notify the public of their availability. If it is not possible to publish the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be published as soon as possible.

A notice shall also be posted at each satellite absentee voting station at least seven days before the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

Both the published and posted notices shall include the following information:

a. The name and date of the election for which ballots will be available.

b. The location(s) of the satellite absentee voting station(s).

c. The dates and times that the station(s) will be open.

d. The precincts for which ballots will be available.

e. An announcement that voter registration forms will be available for new registrations in the county and that changes in the registration records of people who are currently registered within the county may be made at any time.

If the satellite absentee voting station is located in a building with more than one public entrance, brief notices of the location of the satellite absentee voting station shall be posted on building directories, bulletin boards, or doors. These notices shall be posted no later than the time the station opens and shall be removed immediately after the satellite absentee voting station has ceased operation for an election.

21.300(3) *Staff.* Satellite absentee voting station workers may be selected from among the staff members of the commissioner's office, from the election board panel drawn up pursuant to Iowa Code sections 49.15 and 49.16, or a combination of these two sources. Compensation of workers selected from the election board panel shall be at the rate provided in Iowa Code section 49.20.

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner's discretion. All workers must be registered voters of the county, and for primary and general elections the workers must be registered with a political party; however, workers not affiliated with any party may be assigned to work at a satellite absentee voting station as long as not more than one-third of the workers assigned to a particular satellite absentee voting station

are not affiliated with a political party. For all elections, no more than a simple majority of the workers shall be members of the same political party.

People who are prohibited from working at the polls pursuant to Iowa Code section 49.16 may not work at satellite absentee voting stations.

21.300(4) *Oath required.* Before the first day of service at a satellite absentee voting station, each worker shall take an oath substantially in the form titled "Election Official/Clerk Oath" available on the state commissioner's Web site. The oath must be taken before each election.

21.300(5) *Suggested supplies for each satellite absentee voting station.* A list of supplies suggested for each satellite absentee voting station is available on the state commissioner's Web site.

21.300(6) *Ballot transport and storage.* At the commissioner's discretion the ballots may be transported between the commissioner's office and the satellite absentee voting station by the workers who will be on duty that day, or by two people of different political parties who have been designated as couriers by the commissioner. It is not necessary for the same people to transport the ballots in both directions.

If the ballots are transported by the satellite absentee voting station workers, two workers who are members of different political parties and the ballots must travel together in the same vehicle.

Ballots may be stored at the satellite absentee voting station during hours when the station is closed only if they are kept in a locked cabinet or container. The cabinet must be located in a room which is kept locked when not in use. Voted absentee ballots must be delivered to the commissioner's office at least once each week.

21.300(7) *Ballot receipts.* Satellite absentee voting station workers shall sign receipts for the ballots taken to the satellite absentee voting site. The receipt shall be substantially in the form titled "Satellite Absentee Voting Station Ballot Record and Receipt" available on the state commissioner's Web site. A copy of the ballot record and receipt shall be retained in the commissioner's office. The original shall be sent with the ballots to the satellite absentee voting station.

21.300(8) *Arrangement of the satellite absentee voting station.* Protection of the security of the ballots (both voted and unvoted) and the secrecy of each person's vote shall be considered in the arranging of the satellite absentee voting station.

a. *Security.* The satellite absentee voting station shall be arranged so that ballots are protected against removal from the station by unauthorized persons.

b. *Voting area.* Voting booths without curtains shall be placed so that passersby and other voters may not walk directly behind a person using the booth. At least one voting booth must be accessible to the disabled. The booth must be designed to accommodate a person seated in a chair or wheelchair. A chair must be provided for voters who wish to sit down while voting or waiting in line.

c. *Campaign signs and electioneering.* No signs supporting or opposing any candidate or question on the ballot shall be posted on the premises of or within 300 feet of any outside door of any building affording access to a satellite absentee voting station during the hours when absentee ballots are available at the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

21.300(9) *Operation of the satellite absentee voting station.* At all times the satellite absentee voting station shall have at least two workers present to preserve the security of the ballots, both voted and unvoted.

21.300(10) *Voter registration at the satellite absentee voting station.* Each satellite absentee voting station shall provide forms necessary to register voters, including the oaths necessary to process voters registering pursuant to Iowa Code section 48A.7A, and to record changes in voter registration records. Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper or contained in a computerized data file.

As an alternative, the commissioner may provide a computer connection with the commissioner's office. Satellite absentee voting stations shall not be directly connected to the I-Voters statewide voter registration database.

21.300(11) *Procedure for issuing absentee ballot.* The instructions for absentee voting are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

21.300(12) *Closing a station.* The instructions for closing a satellite absentee voting station are available on the state commissioner's Web site and shall be provided to satellite absentee voting station workers unless the commissioner prepares instructions containing substantially the same information as the instructions available on the state commissioner's Web site.

This rule is intended to implement Iowa Code section 53.11.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.301(53) Absentee ballot requests from voters whose registration records are "inactive."

21.301(1) *In person.* Absentee voters whose registration records are "inactive" and who appear in person to vote, either at the office of the commissioner or at a satellite absentee voting station, shall be assigned a status of "active" after requesting an absentee ballot.

21.301(2) *By mail.* When a request for an absentee ballot is received by mail from a voter whose registration record has been made "inactive" pursuant to Iowa Code section 48A.29, the commissioner shall update the voter's residential address to the address listed on the absentee ballot request if requested by the voter and assign the voter a status of "active."

21.301(3) *Absentee ballots received from a voter subsequently assigned "inactive" status.* The commissioner shall set aside the absentee ballot of a voter whose status is changed to "inactive" pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter's ballot. The commissioner shall notify the voter, pursuant to Iowa Code section 53.31, informing the voter that the absentee ballot may be counted if the voter personally delivers or mails a copy of the voter's identification as set forth in Iowa Code section 48A.8 to the commissioner's office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter's identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

This rule is intended to implement Iowa Code section 48A.29 and sections 48A.26, 48A.37 and 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.302(48A) In-person absentee registration. After the close of voter registration for an election, a person who appears in person to apply for and vote an absentee ballot may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote using identification that meets the requirements set forth in Iowa Code section 48A.7A. The voter must also complete an oath of person registering on election day. If the voter does not have appropriate identification, the voter may establish identity and residence using the attestation procedure in Iowa Code section 48A.7A, subsection 1, paragraph *"c."* Otherwise, the person may cast only a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballot envelopes shall be used.

This rule is intended to implement Iowa Code section 48A.7A.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.303(53) Mailing absentee ballots. The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

5. Return carrier envelope. The return carrier envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in substantially the form prescribed by the state commissioner of elections.

8. Receipt. The receipt form required by 2007 Iowa Acts, Senate File 601, section 227, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code sections 53.8 and 53.17 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.304(53) Absentee ballot requests from voters whose registration records are "pending." A voter who requests an absentee ballot and is assigned a status of "pending" must provide identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475.

21.304(1) *In-person applicants.* In-person applicants for absentee ballots assigned a status of "pending" must show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, before casting a ballot. If an in-person applicant provides identification as required by Iowa Code section 48A.8 when casting an absentee ballot in person, the commissioner shall assign the voter's registration record a status of "active" and provide the voter with an absentee ballot. Voters who are unable to provide identification as required by Iowa Code section 48A.8 shall be offered a provisional ballot pursuant to Iowa Code section 49.81.

21.304(2) *By-mail applicants.* By-mail applicants for absentee ballots assigned a status of "pending" must either come to the commissioner's office and show identification pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, or mail a photocopy of identification pursuant to Iowa Code section 48A.8 before the voter's absentee ballot can be counted by the absentee and special voters precinct board. The commissioner shall mail the voter a notice informing the voter of the requirement to provide one of the identification documents listed in Iowa Code section 48A.8 before the voter's absentee ballot can be considered for counting by the absentee and special voters precinct board. If a by-mail applicant provides identification as required by Iowa Code section 48A.8, the commissioner shall assign the voter's registration record a status of "active."

21.304(3) *By-mail absentee voters assigned a status of "pending" who do not provide identification prior to election day.* The ballot of a by-mail absentee voter assigned a status of "pending" who has not shown identification in person at the commissioner's office or provided a photocopy of identification by mail pursuant to Iowa Code section 48A.8 as amended by 2009 Iowa Acts, House File 475, shall be challenged by a member of the absentee and special voters precinct board on election day pursuant to Iowa Code section 53.31. The absentee and special voters precinct board shall immediately mail notice of the challenge to the voter. The notice shall include the deadline for the voter to provide identification pursuant to Iowa Code section 48A.8. If the voter provides identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's ballot shall be considered for counting by the absentee and special voters precinct board. If the voter does not provide identification pursuant to Iowa Code section 48A.8 prior to the time the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the voter's absentee ballot shall be rejected by the absentee and special voters precinct board. The voter shall be notified of the

reason for rejection pursuant to Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475.

This rule is intended to implement Iowa Code section 53.31 and sections 48A.8 and 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.305(53) Confirming commissioner's receipt of an absentee ballot on election day. If a voter's name is on the absentee list prepared pursuant to Iowa Code sections 49.72 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196, and the voter appears at the polling place to vote on election day, the precinct election officials may contact the commissioner's office to confirm whether the commissioner has received the voter's absentee ballot. If the precinct election officials are able to confirm either that the commissioner has not received the voter's absentee ballot or that the voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the precinct election officials shall permit the voter to cast a regular ballot at the polling place.

After confirming that a voter's absentee ballot has not been received or that a voter's absentee ballot has been received but cannot be counted due to a defective or incomplete affidavit, the commissioner shall mark the voter's absentee ballot as "Void" in the statewide voter registration system. The commissioner shall enter "Voted at polls" in the comment box that appears when the ballot is marked as "Void."

If a voter's absentee ballot is returned to the commissioner's office after being marked as "Void" pursuant to this rule, the absentee ballot shall be rejected by the absentee and special voters precinct board pursuant to Iowa Code section 53.25 because the voter cast a ballot in person at the polling place.

This rule is intended to implement Iowa Code sections 49.72, 49.81 and 53.19 as amended by 2010 Iowa Acts, Senate File 2196.

[**ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.306 to **21.319** Reserved.

721—21.320(53) Absentee voting by UOCAVA voters. This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

21.320(1) *Definitions.* The following definitions apply to this rule:

"Armed forces," as used in this rule, is defined in Iowa Code section 53.37(3).

"FPCA" means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

"UOCAVA voter" means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

21.320(2) *Requests for absentee ballots.* All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

a. *Forms.* UOCAVA voters may use the following official forms to request absentee ballots:

(1) A federal postcard absentee ballot application and voter registration form (FPCA).

(2) A state of Iowa official absentee ballot request form.

(3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1)*"b."*

b. *Form not required.* UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

(1) Name.

(2) Age or date of birth.

(3) Iowa residence, including street address (if any) and city.

(4) Address to which the ballot shall be sent.

(5) Township of residence, if applicable.

(6) County of residence.

(7) Party affiliation, if the request is for a ballot for a primary election.

(8) Signature of voter.

(9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, "I am a U.S. citizen living in France."

c. Methods for transmitting absentee ballot requests. UOCAVA voters may transmit absentee ballot requests by any of the following methods:

(1) Mail.

(2) Personal delivery by the voter or a person designated by the voter.

(3) Facsimile machine.

(4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include either an image of the physical signature or a digital signature shall not be accepted.

d. Original request not needed. If the request is sent by E-mail or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

e. Multiple requests from the same person. Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1)*"b,"* the request received from the voter shall be the one honored, not the proxy request.

f. Subsequent request after ballot has been sent. Not more than one ballot shall be transmitted by the commissioner to any UOCAVA voter for a particular election unless, after the ballot has been mailed or transmitted electronically pursuant to rule 721—21.320(53), the voter reports a change in the address, E-mail address or fax number to which the ballot should be sent. The commissioner shall void the original absentee ballot request and include a comment in the voter's registration record, noting the I-Voters-sequence number of the original ballot and noting that a replacement ballot was sent to an updated address. If the original ballot is returned voted, it shall be counted only if the replacement ballot does not arrive before the deadline for receiving absentee ballots set forth in Iowa Code section 53.17.

g. Requests for absentee ballots through the end of the calendar year. 2009 Iowa Code Supplement section 53.40 as amended by 2010 Iowa Acts, Senate File 2194, permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request in which the UOCAVA voter requests ballots for all elections, the commissioner shall send the applicant a ballot for each election held after the request is received through the end of the calendar year in which the request is received. If the applicant does not request ballots for all elections or does not specify which elections the request is for, the commissioner shall send the applicant a ballot only for federal elections through the end of the calendar year in which the request is received.

(1) When an absentee ballot for a UOCAVA voter is returned as undeliverable by the United States Postal Service or an E-mail server or a fax cannot be transmitted to the number provided by the voter, the commissioner shall do the following:

1. Verify that the commissioner's office sent the absentee ballot to the address, E-mail address or fax number requested by the UOCAVA voter. If the absentee ballot was sent incorrectly, the commissioner shall correct the error and immediately transmit a new absentee ballot.

2. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall E-mail the voter if the commissioner has an E-mail address on file to inform the voter that the voter's ballot was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address if the voter wishes to continue to receive absentee ballots.

3. If the absentee ballot was sent to the correct mailing address, E-mail address or fax number, the commissioner shall also attempt to contact the voter by sending a forwardable notice to both the voter's residential address and the voter's absentee mailing address informing the voter that the voter's ballot

was returned undeliverable, and the commissioner must be provided with a new FPCA containing a new mailing address, E-mail address or fax number if the voter wishes to continue to receive absentee ballots.

4. If the absentee ballot was mailed, E-mailed or sent to the correct address or fax number, the commissioner shall terminate the voter's current FPCA request and shall not send the voter any further ballots unless a new absentee ballot request is received from the voter.

(2) If the voter provides a new FPCA with a new mailing address, E-mail address or fax number before election day, the commissioner shall enter a new absentee request on the voter's registration record and transmit the ballot via the method requested by the voter. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

21.320(3) *Electronic transmission of absentee ballots to UOCAVA voters.*

a. Electronic transmission of absentee ballots by facsimile machine or by E-mail is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner may employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

b. Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

(1) Instructions to the county commissioners of elections for providing this service.

(2) Instructions to the voter for marking and returning the ballot.

(3) The affidavit envelope form, which can be printed by the voter on an envelope and used for the voter's declaration of eligibility and voter registration application, if necessary.

(4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

21.320(4) *Ballot return by electronic transmission.*

a. Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are in an area designated as an imminent danger pay area, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: "I understand that by returning this ballot by electronic transmission my voted ballot will not be secret. I hereby waive my right to a secret ballot."

b. When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

c. The absentee ballot shall be sealed in an envelope marked with the voter's name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

This rule is intended to implement Iowa Code sections 53.40 and 53.46.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8777B**, IAB 6/2/10, effective 5/7/10]

721—21.321 to **21.349** Reserved.

721—21.350(53) Absentee ballot processing for elections held following July 1, 2007. Rescinded IAB 9/26/07, effective 9/7/07.

721—21.351(53) Receiving absentee ballots. The commissioner shall carefully account for and protect all absentee ballots returned to the office.

21.351(1) *Note receipt.* The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner's office. The commissioner shall also record receipt of the ballot in I-Voters.

21.351(2) *Temporary storage.* If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

21.351(3) *Secure area.* The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for completeness and defects.

[**ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.352(53) Review of returned affidavit envelopes.

21.352(1) *Personnel.* The commissioner may assign staff members to complete the review of returned affidavit envelopes. Only persons who have been trained for this responsibility shall be authorized to review affidavit envelopes.

21.352(2) *Affidavit envelopes reviewed.* The affidavit envelopes of all absentee ballots returned to the commissioner's office shall be reviewed, including those of ballots returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds that any absentee affidavits returned from any health care facility are incomplete or defective, the commissioner shall send the bipartisan delivery team back to assist voters as needed with completing affidavits or to deliver any replacement ballots.

21.352(3) *Instructions.* Each reviewer shall receive instructions in substantially the form prepared by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

a. Leaving unsecured ballots unattended.

b. Altering any information on any affidavit.

c. Adding any information to any affidavit, except as specifically required to comply with the requirements of the law.

d. Sealing any affidavit envelope found open.

e. Discarding any return carrier envelopes, ballots, or affidavit envelopes returned by voters.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.353(53) Opening the return carrier envelopes. The commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the envelope.

721—21.354(53) Review process. A reviewer shall remove the contents from only one return carrier envelope at a time.

21.354(1) *Return carrier envelopes preserved.* The return carrier envelopes shall be stored in a manner that will facilitate their retrieval, if necessary. They shall be stored for 22 months for federal elections and 6 months for local elections.

21.354(2) *Examination of affidavit envelope.* The reviewer shall make sure that:

a. The affidavit envelope is sealed, apparently with the ballot inside.

b. The affidavit envelope has not been opened and resealed.

c. The affidavit includes all of the following:

(1) A signature.

(2) For primary elections only, political party affiliation.

21.354(3) *No defects or incomplete information.* If the reviewer finds that the required information on the affidavit is complete and that there are no defects that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

21.354(4) *Defective and incomplete affidavits.* The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope:

a. The commissioner shall contact the voter immediately if the affidavit envelope is defective. An affidavit envelope is defective if:

(1) The absentee ballot is not enclosed in the affidavit envelope.

(2) The affidavit envelope is not sealed.

(3) The affidavit envelope has been opened and resealed.

(4) The voter submits a change of address in a new precinct after returning a voted absentee ballot.

b. The commissioner shall contact the voter within 24 hours if the affidavit is incomplete. An incomplete affidavit lacks:

(1) The signature of the voter.

(2) For primary elections only, political party affiliation.

c. If an affidavit envelope has flaws that are included in both paragraphs *"a"* and *"b,"* the commissioner shall follow the process in paragraph *"a."*

21.354(5) *Defective and incomplete affidavits stored separately.* The commissioner shall store the defective and incomplete affidavit envelopes separately from other returned absentee ballot affidavit envelopes.

a. Incomplete affidavit envelopes requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective affidavit envelopes must be attached to the replacement ballot (if any) for review by the absentee and special voters precinct board.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.355(53) Notice to voter. When the commissioner finds an incomplete absentee ballot affidavit or finds a defective affidavit envelope, the commissioner shall notify the voter in writing and, if possible, by telephone and by E-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

21.355(1) *Notice to voter—incomplete ballot affidavit.* Within 24 hours after receipt of an absentee ballot with an incomplete affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

a. Explanation of missing required information (lack of signature or, for primary elections only, political party affiliation).

b. The voter's options for correcting the affidavit as follows:

(1) Completing the affidavit at the commissioner's office by 5 p.m. the day before the election;

(2) Requesting a replacement ballot pursuant to Iowa Code section 53.18; or

(3) Voting at the polls on election day.

c. Address of commissioner's office, business hours and contact information.

21.355(2) *Notice to voter—defective ballot affidavit.* Immediately after determining that an absentee ballot affidavit envelope is defective, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

a. Reason for defect.

b. The voter's options for correcting the defect as follows:

(1) Requesting a replacement ballot; or

(2) Voting at the polls on election day.

c. Process for requesting a replacement ballot.

d. Address of commissioner's office, business hours and contact information.

21.355(3) *Telephone contact.* If the voter has provided a telephone number, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

a. Name of the person making the call.

b. Date and time of the call.

c. Whether the person making the call spoke to the voter.

21.355(4) *E-mail contact.* If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter

by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

Rules 721—21.351(53) through 721—21.355(53) are intended to implement 2009 Iowa Code Supplement section 53.18 as amended by 2010 Iowa Acts, Senate file 2196, and section 53.25.

721—21.356 to **21.358** Reserved.

721—21.359(53) Processing absentee ballots before election day. The commissioner may only direct the absentee and special voters precinct board to open affidavit envelopes on the Monday before election day under the following circumstances:

For any election, only if the commissioner has provided secrecy envelopes (or folders) pursuant to subrule 21.359(1) and the commissioner determines removing secrecy envelopes from affidavit envelopes is necessary due to the quantity of voted absentee ballots received as set forth in Iowa Code section 53.23, subsection 3, paragraph *"a."*

For general elections, if the commissioner convenes the absentee and special voters precinct board pursuant to Iowa Code section 53.23, subsection 3, paragraph *"c,"* to begin tabulation of absentee ballots.

21.359(1) The secrecy envelope shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:

Secrecy Envelope

After you vote, put your ballot in here.

21.359(2) When the absentee and special voters precinct board convenes to begin processing absentee ballots, the board shall first review voters' affidavits to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected for the reasons set forth in 2009 Iowa Code Supplement section 53.25. Affidavit envelopes containing ballots that are rejected shall be stored in the manner prescribed by Iowa Code section 53.26. The applications submitted for rejected ballots shall be stored in a secure location for the time period required by Iowa Code section 50.19.

21.359(3) The affidavit envelopes containing ballots that have been accepted for counting by the absentee and special voters precinct board shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed.

21.359(4) If a voter has not enclosed the ballot in a secrecy envelope and the ballot has not been folded in a manner that conceals all votes marked on the ballot, the officials shall put the ballot in a secrecy envelope without examining the ballot.

21.359(5) The following security procedures shall be followed:

a. The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2. If, after receiving notice from the commissioner pursuant to Iowa Code section 53.23, subsection 3, paragraph *"a,"* either or both political parties fail to appoint an observer, the commissioner may continue with the proceedings.

b. No ballots shall be counted or examined before election day except as provided in Iowa Code section 53.23, subsection 3, paragraph *"c,"* as amended by 2009 Iowa Acts, House File 670, section 1.

c. When secrecy envelopes are removed from affidavit envelopes on the day before an election and not tabulated as permitted by Iowa Code section 53.23, subsection 3, paragraph *"c,"* as amended by 2009 Iowa Acts, House File 670, section 1, the number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be verified before any ballots are removed from the secrecy

envelopes on election day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement Iowa Code section 53.23 as amended by 2009 Iowa Acts, House File 670.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.360(53) Failure to affix postmark date. For any absentee ballot referred to in Iowa Code section 53.17, if the officially authorized postal service fails to affix a postmark date on the return carrier envelope, or the postmark date is illegible, but the date written on the voter's affidavit envelope is a date no later than the day prior to the election, the ballot shall be counted as provided in Iowa Code section 53.17. If no date can be read on either the return carrier envelope or the affidavit envelope, the affidavit envelope shall not be opened, and the ballot shall be rejected as provided in Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475.

This rule is intended to implement Iowa Code section 53.17 and section 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.361(53) Rejection of absentee ballot. The absentee and special voters precinct board shall reject absentee ballots without opening the affidavit envelope if any of the conditions cited in Iowa Code section 53.25 as amended by 2009 Iowa Acts, House File 475, exist.

21.361(1) An absentee ballot shall be rejected if the affidavit lacks the voter's signature.

21.361(2) An absentee ballot shall be rejected if the applicant is not a duly registered voter in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5 or a consolidated precinct established by the commissioner pursuant to Iowa Code section 49.11, subsection 3, paragraph *"a."*

21.361(3) An absentee ballot shall be rejected if the affidavit envelope is open.

21.361(4) An absentee ballot shall be rejected if the affidavit envelope has been opened and resealed.

21.361(5) An absentee ballot shall be rejected if the affidavit envelope contains more than one ballot of any kind.

21.361(6) An absentee ballot shall be rejected if the voter has voted in person at the polls.

21.361(7) An absentee ballot shall be rejected if in primary elections the voter does not declare a party affiliation on the voter's affidavit.

This rule is intended to implement Iowa Code sections 49.9 and 53.14 and section 53.25 as amended by 2009 Iowa Acts, House File 475.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.362 to **21.369** Reserved.

721—21.370(53) Training for absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.371(53) Certificate. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.372(53) Frequency of training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.373(53) Registration of absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.374(53) County commissioner's duties. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.375(53) Absentee ballot courier training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.376(53) Receiving absentee ballots. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.377 to **21.399** Reserved.

DIVISION IV
INSTRUCTIONS FOR SPECIFIC ELECTIONS

721—21.400(376) Signature requirements for certain cities. This rule applies to cities which have all of the following characteristics:

1. Nomination procedures under Iowa Code section 376.3 are used. (This includes cities with primary or runoff election provisions. It does not include cities with nominations under Iowa Code chapter 44 or 45.)
2. Some or all council members are voted upon by the electors of wards, rather than by the electors of the entire city.
3. Ward boundaries have been changed since the last regular city election at which the ward seat was on the ballot.
4. The number of wards has not changed.

Calculation of the number of signatures for ward seats shall use the vote totals from the wards as the wards were configured at the time of the last regular city election at which the ward seat was on the ballot.

This rule is intended to implement Iowa Code section 376.4.

721—21.401(376) Signature requirements in cities with primary or runoff election provisions. In cities using the provisions of Iowa Code section 376.4 for nomination of candidates and in which more than one council member was elected at-large at the last preceding regular city election, the number of signatures shall be calculated by the following formula:

V = the total number of votes cast for all candidates for council member at-large at the last regular city election;

E = the number of people to be elected at the last regular city election;

$$\frac{V}{E} \times .02 = \text{the number of signatures needed by each candidate in the next regular city election.}$$

This rule is intended to implement Iowa Code section 376.4.

721—21.402(372) Filing deadline for charter commission appointment petition. If a special election has been called by a city to present to the voters the question of adopting a different form of city government, receipt by the city council of a petition requesting appointment of a charter commission shall stay the special election if the petition is received no later than 5 p.m. on the Friday preceding the date of the special election.

This rule is intended to implement Iowa Code section 372.3.

721—21.403(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.

21.403(1) *Notice to the commissioner.* At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

a. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

b. No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

21.403(2) *Election calendar.* The election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the fifty-third day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the fifty-third day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the fiftieth day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the fiftieth day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.404(81GA,HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements. This rule applies to cities that have adopted by ordinance one of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

21.404(1) *Notice to the commissioner.* At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

21.404(2) *Special elections to fill vacancies held in conjunction with the general election.* If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of the general election. Candidates shall file nomination papers with the city clerk not later than 5 p.m. on the seventieth day before the general election. The city clerk shall deliver the nomination papers accepted by the clerk not later than 5 p.m. on the sixty-ninth day before the general election. Objection and withdrawal deadlines shall be 64 days before the general election, the same as the deadlines for candidates who file their nomination papers with the commissioner. Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

21.404(3) *Election calendar.* If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the twenty-fifth day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the twenty-fifth day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the twenty-second day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the twenty-second day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.405 to **21.499** Reserved.

721—21.500(277) Signature requirements for school director candidates. The number of signatures required to be filed by candidates for the office of director in the regular school election shall be calculated from the number of registered voters in the district on May 1 of the year in which the election will be held. Candidates who are seeking election in districts with election plans as specified in Iowa Code section 275.12(2)*"b"* and *"c,"* where the candidate must reside in a specific director district, but is voted upon by all of the electors of the school district, shall be required to file a number of signatures calculated from

the number of registered voters in the whole school district. Candidates who will be voted upon only by the electors of a director district shall be required to file a number of signatures calculated from the number of registered voters in the director district in which the candidate resides and seeks to represent.

If a special election is to be held to fill a vacancy on the school board, the number of registered voters on the first day of the month preceding the date the commissioner receives notice of the special election shall be used to calculate the number of signatures required for the special election.

This rule is intended to implement Iowa Code sections 277.4 and 279.7.

721—21.501 to **21.599** Reserved.

721—21.600(43) Primary election signatures—plan three supervisor candidates. The minimum number of signatures needed by candidates for the office of county supervisor elected under plan three, where candidates are voted upon only by the voters of the supervisor district, shall be determined by one of the two following methods.

21.600(1) If there were 5,000 or more votes cast in the supervisor district for a political party's candidate for governor or for president of the United States, the minimum number of signatures needed is 100.

21.600(2) If there were less than 5,000 votes cast in the supervisor district for a political party's candidate for governor or for president of the United States, the minimum number of signatures is determined by using one of the following formulas:

Democratic candidate's signature requirement: $([AD \div S] + VD) \times .02$

Republican candidate's signature requirement: $([AR \div S] + VR) \times .02$

AD = the number of absentee votes received in the entire county by the Democratic party's candidate for governor or for president of the United States in the previous general election.

AR = the number of absentee votes received in the entire county by the Republican party's candidate for governor or for president of the United States in the previous general election.

S = the number of supervisor districts in the county (3 or 5).

VD = the number of votes cast in the supervisor district for the Democratic party's candidate for governor or for president of the United States in the previous general election. (If this number is 5,000 or more, the minimum number of signatures needed is 100.)

VR = the number of votes cast in the supervisor district for the Republican party's candidate for governor or for president of the United States in the previous general election. (If this number is 5,000 or more, the minimum number of signatures needed is 100.)

This rule is intended to implement Iowa Code section 43.20(1)*"d."*

721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors. After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204, the signatures for candidates at the next primary and general elections shall be calculated as follows:

21.601(1) *Primary election.* Divide the total number of votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

21.601(2) *Nominations by petition.* If the effective date of the change in the number of districts was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

721—21.602(43) Primary election—nominations by write-in votes for certain offices.

21.602(1) The process described in subrule 21.602(2) shall be used to determine whether the primary election is conclusive and a candidate was nominated for partisan offices that are:

a. Not mentioned in Iowa Code section 43.53 (township offices) or 43.66 (state representative and state senator), and

b. For which no candidate's name was printed on the primary election ballot, and

c. For which no candidate's name was printed on the primary election ballot in any previous primary election.

21.602(2) To be nominated by write-in votes, the person must receive at least 35 percent of the number of votes cast in the previous general election for that party's candidate for president of the United States or for governor, as the case may be, as follows:

a. Statewide office: 35 percent of votes cast statewide.

b. Congressional district: 35 percent of votes cast within the current boundaries of the Congressional district.

c. County office, including plan II supervisors: 35 percent of the votes cast within the county.

d. Plan III county supervisor: 35 percent of the votes cast within the supervisor district. If the boundaries of the supervisor district have changed since the previous general election, the number of votes cast within the county for the party candidate for president or for governor, as the case may be, shall be divided by the number of supervisor districts in the county; then the quotient shall be multiplied by 0.35.

21.602(3) If a write-in candidate is declared nominated at the canvass of votes, Iowa Code section 43.67, which requires the appropriate election commissioner to notify the candidate, shall apply.

This rule is intended to implement Iowa Code section 43.66.

721—21.603 to **21.799** Reserved.

721—21.800(423B) Local sales and services tax elections.

21.800(1) Petitions requesting imposition, rate change, use change, or repeal of local sales and services taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall include the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition, rate change, use change, or repeal of a local sales and services tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which notice is given to the commissioner.

21.800(2) As an alternative to the method of initiating a local option tax election described in subrule 21.800(1), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county auditor pursuant to Iowa Code section 423B.1, subsection 4, paragraph *"b,"* requesting submission of a local option tax imposition, rate change, use change, or repeal to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner shall notify affected jurisdictions of the local option tax election date. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which the commissioner received the motion triggering the election.

21.800(3) Notice of local sales and services tax election.

a. Not less than 60 days before the date that a local sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots, but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

b. The city councils and the supervisors shall provide to the county commissioner the following information to be included in the notice and on the ballots for imposition elections:

(1) The rate of the tax.

(2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.

(3) The approximate amount of local option tax revenues that will be used for property tax relief in the jurisdiction.

(4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

c. The information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If a jurisdiction fails to provide the information in subparagraphs 21.800(3)*"b"*(1), 21.800(3)*"b"*(3), and 21.800(3)*"b"*(4) above, the following information shall be substituted in the notice and on the ballot:

(1) One percent (1%) for the rate of the tax.

(2) Zero percent (0%) for property tax relief.

(3) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.

This rule is intended to implement Iowa Code section 423B.1.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.801(423B) Form of ballot for local option tax elections. If questions pertaining to more than one of the authorized local option taxes are submitted at a single election, all of the public measures shall be printed on the same ballot. The form of ballots to be used throughout the state of Iowa for the purpose of submitting questions pertaining to local option taxes shall be as follows:

21.801(1) *Local sales and services tax propositions.* Sales and services tax propositions shall be submitted to the voters of an entire county. If the election is being held for the voters to decide whether to impose the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of imposition shall be voted upon in all parts of the county where the tax has not been approved. If the election is being held for the voters to decide whether to repeal the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of repeal shall be voted upon in all parts of the county where the tax was previously imposed. If the election is being held for the voters to decide whether to change the rate or use of the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of rate or use change shall be voted upon in all parts of the county where the tax was previously imposed.

The ballot submitted to the voters of each incorporated area and the unincorporated area of the county shall show the intended uses for that jurisdiction. The ballot submitted to the voters in contiguous cities within a county shall show the intended uses and repeal dates, if not uniform, for each of the contiguous cities. The ballots shall be in substantially the following form:

a. Imposition question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

b. Imposition question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

c. Imposition question with an automatic repeal date for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

d. Imposition question with an automatic repeal date for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of ____ percent (____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

e. Repeal question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize repeal of the ____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special

paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The _____ percent (_____%) local sales and services tax shall be repealed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

f. Repeal question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize repeal of the ____ percent (_____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The _____ percent (_____%) local sales and services tax shall be repealed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

g. Rate change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to ____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year). The current rate is ____ percent (_____%).

Revenues from the sales and services tax are allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

h. Rate change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The rate of the local sales and services tax shall be increased (or decreased) to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax are allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

i. Use change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize a change in the use of the _____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the _____ percent (_____%) local sales and services tax shall be changed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

Revenues from the sales and services tax are currently allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

j. Use change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize a change in the use of the _____ percent (_____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The use of the _____ percent (_____%) local sales and services tax shall be changed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

CURRENT USES OF THE TAX:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)
FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)
FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)

k. Imposition question with differing automatic repeal dates for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month/day/year) until automatic repeal date specified.

A local sales and services tax shall be imposed in the following cities at the rate of _____ percent (_____%) to be effective from _____ (month/day/year) until the date specified below and the revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
The tax shall be repealed on _____ (month/day/year).
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:
The tax shall be repealed on _____ (month/day/year).
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:
The tax shall be repealed on _____ (month/day/year).
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

21.801(2) *For a local vehicle tax:*

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Summary: To authorize the county of (insert name of county) to impose a local vehicle tax at the rate of _____ dollars ($_____) per vehicle and to exempt the following classes from the tax:

_____.

The revenues are to be expended as set forth in the text of the public measure.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45. Counties using optical scan ballots which are read by automatic tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25 as amended by 2009 Iowa Acts, House File 475.)

The county of _____, Iowa shall be authorized to impose a local vehicle tax at the rate of _____ dollars ($_____) per vehicle and to exempt the following classes of vehicles from the tax:

_____

_____ (insert percentage or dollar amount) of the revenues is/are to be used for property tax relief.
The balance of the revenues is to be expended for:

(List purposes for which remaining revenues will be used)
[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.802(423B) Local vehicle tax elections.

21.802(1) Petitions requesting imposition of local vehicle taxes shall be filed with the county board of supervisors.

a. Each person signing the petition shall add the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local vehicle tax. In the notice the supervisors shall include the date of the election.

c. The election shall be held on the first possible special election date for counties set forth in Iowa Code section 39.2, subsection 4, paragraph *"c,"* but no sooner than 84 days after the date upon which notice is given to the commissioner.

21.802(2) Notice of local vehicle tax election. Not less than 60 days before the date that a local vehicle tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include a sample ballot, but shall include all of the information that will appear on the ballot. The notice of election provided for in Iowa Code section 49.53 as amended by 2009 Iowa Acts, House File 475, shall also be published at the time and in the manner specified in that section.
[**ARC 8045B**, IAB 8/26/09, effective 7/27/09]

721—21.803(82GA,HF2663) Revenue purpose statement ballots. When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the "penny sales and services tax for schools," the following ballot formats shall be used.

21.803(1) *Ballot to propose a revenue purpose statement.* The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

◯ YES
◯ NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

21.803(2) *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

⬭ YES

⬭ NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

21.803(3) *Ballot to extend a revenue purpose statement.* The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

⬭ YES

⬭ NO

Summary: To authorize _____ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

_____ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement 2008 Iowa Acts, House File 2663, section 29.

721—21.804 to **21.809** Reserved.

721—21.810(34A) Referendum on enhanced 911 emergency telephone communication system funding.

21.810(1) *Form of ballot.* The ballot for the E911 referendum shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed service area).

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

"Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a monthly surcharge of (an amount to be determined by the local joint E911 service board of up to one dollar) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within the proposed E911 service area shown on the map below."

21.810(2) *Cost of election.* The E911 service board shall pay the costs of the referendum election.

21.810(3) *Enhanced 911 emergency service funding referendum held in conjunction with a scheduled election.*

a. Notice to commissioner. The joint E911 service board shall notify the commissioner in writing, no later than the last day upon which nomination papers may be filed, of their intention to conduct the referendum with the scheduled election. The notice shall contain the complete text of the referendum question including the description of the proposed E911 service area. If a map is to be used on the ballot to describe the proposed E911 service area, the map shall be included. If the E911 service area includes more than one county, the service board shall notify the commissioner of each of the counties.

b. Conduct of election. All qualified electors in a precinct which is to be served, in whole or in part, by the proposed E911 service area, shall be permitted to vote on the question. The results of the referendum shall be canvassed by the board of supervisors at the time of the canvass of the scheduled election. The commissioner shall immediately certify the results to the joint E911 board.

c. Service board duties. If subscribers from more than one county are included within the proposed service area, the E911 service board shall meet as a board of canvassers to compile the results from the counties. The canvass shall be held on the tenth day following the election at a time established by the E911 service board. The service board shall prepare an abstract showing in words and numbers the number of votes cast for and against the question and, if a simple majority of those voting on the question has voted in the affirmative, the board shall declare that the surcharge has been adopted. Votes cast and not counted as a vote for or against the question shall not be used in computing the total vote cast for and against the question.

21.810(4) *Form of ballot for alternative surcharge.* The ballot for elections conducted pursuant to Iowa Code section 34A.6A shall be in the following form:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES □
NO □

Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within (description of the proposed service area). The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

"Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be

determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber's monthly phone bill if provided within the proposed E911 service area shown on the map below. The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line."

This rule is intended to implement Iowa Code sections 34A.6 and 34A.6A.

721—21.811 to **21.819** Reserved.

721—21.820(99F) Gambling elections.

21.820(1) Petitions requesting elections to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure shall be filed with the county board of supervisors and shall be substantially in the form posted on the state commissioner's Web site titled "Petition Requesting Special Election."

a. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure in the county. The election shall be held on the next possible special election date pursuant to Iowa Code section 39.2, subsection 4, paragraph *"a,"* but no fewer than 46 days from the date notice is given to the county commissioner.

b. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat or the gambling structure election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days' written notice. Otherwise, the supervisors shall give at least 46 days' written notice.

21.820(2) Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

◯ YES

◯ NO

Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

21.820(3) Form of ballot for elections to continue gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

◯ YES

◯ NO

Summary: Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in _____ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling

games on an excursion gambling boat or at a gambling structure will end within 60 days of this election. (Iowa Code section 99F.7(10)*"c"*)

21.820(4) Ballot form to permit gambling games at existing pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

The operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

21.820(5) Abstract of votes. A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

21.820(6) Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in _____ County will end.

21.820(7) Ballot form for general election for continuing gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

YES

NO

Summary: The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved.

The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue on an excursion gambling boat or at a gambling structure in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on an excursion gambling boat or at a gambling structure in _____ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 and Iowa Code Supplement section 99F.4D.

[**ARC 8045B**, IAB 8/26/09, effective 7/27/09; **ARC 8779B**, IAB 6/2/10, effective 7/1/10]

721—21.821 to **21.829** Reserved.

721—21.830(357E) Benefited recreational lake district elections. Elections for benefited recreational lake districts shall be conducted according to the following procedures.

21.830(1) *Conduct of election.* It is not mandatory for the county commissioner of elections to conduct elections for a benefited recreational lake district. However, if both a public measure and a candidate election will be held on the same day in a benefited recreational lake district, the same person shall be responsible for conducting both elections. All elections must be held on a Tuesday.

21.830(2) *Ballots.* Ballots for benefited recreational lake district trustee elections shall be printed on opaque white paper, 8 by 11 inches in size. The ballots for the initial election for the office of trustee shall be in substantially the following form:

OFFICIAL BALLOT
BENEFITED RECREATIONAL LAKE DISTRICT
Election date
(facsimile signature of person responsible for printing ballots)

FOR TRUSTEE:
To vote: Neatly print the names of at least three people you would like to see elected to the office of Trustee of the Benefited Recreational Lake District. You may vote for as many people as you wish, but you must vote for at least three.
(At the bottom of the ballot a space shall be included for the endorsement of the precinct election official, like this:)

Precinct official's endorsement: _____

21.830(3) *Canvass of votes.* On the Monday following the election, the board of supervisors shall canvass the votes cast at the election. At the initial election the supervisors shall choose three trustees from among the five persons who received the most votes. The results of benefited recreational lake district elections shall be certified to the district board of trustees.

This rule is intended to implement Iowa Code section 357E.8.

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◊ Two or more ARCs

LABOR SERVICES DIVISION[875]

[Prior to 11/19/97, see Labor Services Division[347]]

CHAPTER 1
DESCRIPTION OF ORGANIZATION AND PROCEDURES BEFORE THE DIVISION

DIVISION I
ADMINISTRATION

1.1(91) Definitions
1.2(91) Scope and application
1.3(91) Department of workforce development, division of labor services
1.4 to 1.10 Reserved

DIVISION II
OPEN RECORDS AND FAIR INFORMATION PRACTICES

1.11(22,91) General provisions
1.12(22,91) Request for access to records
1.13(22,91) Access to confidential records
1.14(22,91) Requests for treatment of a record as a confidential record and withholding from examination
1.15(22,91) Procedure by which additions, dissents, or objections may be entered into certain records
1.16(22,91) Consent to disclosure by the subject of a confidential record
1.17(22,91) Disclosure without the consent of the subject
1.18(22,91,77GA,ch1105) Availability of records
1.19(22,91) Routine uses
1.20(22,91) Release to a subject
1.21(22,91) Notice to suppliers of information
1.22(22,91) Data processing systems comparison
1.23(22,91) Personally identifiable information
1.24 to 1.30 Reserved

DIVISION III
RULE-MAKING PROCEDURES

1.31(17A) Applicability
1.32(17A) Advice on possible rules before notice of proposed rule adoption
1.33(17A) Public rule-making docket
1.34(17A) Notice of proposed rule making
1.35(17A) Public participation
1.36(17A) Regulatory analysis
1.37(17A,25B) Fiscal impact statement
1.38(17A) Time and manner of rule adoption
1.39(17A) Variance between adopted rule and published notice of proposed rule adoption
1.40(17A) Exemptions from public rule-making procedures
1.41(17A) Concise statement of reasons
1.42(17A,89) Contents, style, and form of rule
1.43(17A) Agency rule-making record
1.44(17A) Filing of rules
1.45(17A) Effectiveness of rules prior to publication
1.46(17A) General statements of policy
1.47(17A) Review by agency of rules
1.48 and 1.49 Reserved

DIVISION IV
DECLARATORY ORDERS

1.50(17A)	Petition for declaratory order
1.51(17A)	Notice of petition
1.52(17A)	Intervention
1.53(17A)	Briefs
1.54(17A)	Inquiries
1.55(17A)	Service and filing of petitions and other papers
1.56(17A)	Consideration
1.57(17A)	Action on petition
1.58(17A)	Refusal to issue order
1.59(17A)	Contents of declaratory order—effective date
1.60(17A)	Copies of orders
1.61(17A)	Effect of a declaratory order
1.62 to 1.64	Reserved

DIVISION V
CONTESTED CASES

1.65(17A)	Scope and applicability
1.66(17A)	Definitions
1.67(17A)	Time requirements
1.68(17A)	Requests for contested case proceeding
1.69(17A)	Notice of hearing
1.70(17A)	Presiding officer
1.71(17A)	Waiver of procedures
1.72(17A)	Disqualification
1.73(17A)	Consolidation—severance
1.74(17A)	Answer
1.75(17A)	Pleadings, service and filing
1.76(17A)	Discovery
1.77(17A)	Subpoenas
1.78(17A)	Motions
1.79(17A)	Prehearing conference
1.80(17A)	Continuances
1.81(17A)	Withdrawals
1.82(17A)	Intervention
1.83(17A)	Hearing procedures
1.84(17A)	Evidence
1.85(17A)	Default
1.86(17A)	Ex parte communication
1.87(17A)	Recording costs
1.88(17A)	Interlocutory appeals
1.89(17A)	Final decision—nonlicense decision
1.90(17A)	Final decision—license decision
1.91(17A)	Appeals and review
1.92(17A)	Applications for rehearing
1.93(17A)	Stays of agency actions
1.94(17A)	No factual dispute contested cases
1.95(17A)	Emergency adjudicative proceedings
1.96 to 1.98	Reserved

DIVISION VI
INTEREST, FEES AND CHARGES

1.99(17A,91) Interest
1.100 Reserved

DIVISION VII
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

1.101(17A,91) Scope
1.102(17A,91) Petitions
1.103(17A,91) Notice and acknowledgment
1.104(17A,91) Review
1.105(17A,91) Ruling
1.106(17A,91) Public availability
1.107(17A,91) Cancellation
1.108(17A,91) Violations
1.109(17A,91) Appeals

IOWA OCCUPATIONAL
SAFETY AND HEALTH

CHAPTER 2
IOSH ENFORCEMENT, IOSH RESEARCH AND STATISTICS,
IOSH CONSULTATION AND EDUCATION

2.1(88) Scope and application
2.2(88) IOSH enforcement
2.3(88) IOSH research and statistics
2.4(88) IOSH private sector consultative services
2.5(88) IOSH public sector consultative services
2.6(88) IOSH education

CHAPTER 3
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

3.1(88) Posting of notice; availability of the Act, regulations and applicable standards
3.2(88) Objection to inspection
3.3(88) Entry not a waiver
3.4(88) Advance notice of inspections
3.5(88) Conduct of inspections
3.6(88) Representatives of employers and employees
3.7(88) Complaints by employees
3.8(88) Trade or governmental secrets
3.9(88) Imminent danger
3.10(88) Consultation with employees
3.11(88) Citations
3.12(88) Informal conferences
3.13(88) Petitions for modification of abatement date
3.14 to 3.18 Reserved
3.19(88) Abatement verification
3.20(88) Policy regarding employee rescue activities
3.21 Reserved
3.22(88,89B) Additional hazard communication training requirements
3.23(88) Definitions
3.24(88) Occupational safety and health bureau forms

CHAPTER 4
RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

4.1(88) Purpose and scope
4.2(88) First reports of injury
4.3(88) Record-keeping regulations

CHAPTER 5
RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS, TOLERANCES AND EXEMPTIONS

5.1(88) Purpose and scope
5.2(88) Definitions
5.3 Reserved
5.4(88) Effect of variances
5.5(88) Notice of a granted variance
5.6(88) Form of documents; subscription; copies
5.7(88) Temporary variance
5.8(88) Permanent variance
5.9(88) Special variance
5.10(88) Modification and revocation of rules or orders
5.11(88) Action on applications
5.12(88) Requests for hearings on applications
5.13(88) Consolidation of proceedings
5.14(88) Notice of hearing
5.15(88) Manner of service
5.16(88) Hearing examiner; powers and duties
5.17(88) Prehearing conferences
5.18(88) Consent findings and rules or orders
5.19(88) Discovery
5.20(88) Hearings
5.21(88) Decisions of hearing examiner
5.22(88) Motion for summary decision
5.23(88) Summary decision
5.24(88) Finality for purposes of judicial review

CHAPTERS 6 and 7
Reserved

CHAPTER 8
CONSULTATIVE SERVICES

8.1(88) Purpose and scope
8.2(88) Definitions
8.3(88) Requesting and scheduling of on-site consultation visit
8.4 and 8.5 Reserved
8.6(88) Conducting a visit
8.7(88) Relationship to enforcement

CHAPTER 9
DISCRIMINATION AGAINST EMPLOYEES

9.1(88) Introductory statement
9.2(88) Purpose of this chapter
9.3(88) General requirements of Iowa Code section 88.9(3)
9.4(88) Persons prohibited from discriminating
9.5(88) Persons protected by Iowa Code section 88.9(3)

9.6(88) Unprotected activities distinguished
9.7 and 9.8 Reserved
9.9(88) Complaints under or related to the Act
9.10(88) Proceedings under or related to the Act
9.11(88) Testimony
9.12(88) Exercise of any right afforded by the Act
9.13 and 9.14 Reserved
9.15(88) Filing of complaint for discrimination
9.16(88) Notice of determination
9.17(88) Withdrawal of complaint
9.18(88) Arbitration or other agency proceedings
9.19 and 9.20 Reserved
9.21(88) Walkaround pay disputes
9.22(88) Employee refusal to comply with safety rules

CHAPTER 10
GENERAL INDUSTRY SAFETY AND HEALTH RULES
10.1(88) Definitions
10.2(88) Applicability of standards
10.3(88) Incorporation by reference
10.4(88) Exception for hexavalent chromium exposure in metal and surface finishing job shops
10.5 and 10.6 Reserved
10.7(88) Definitions and requirements for a nationally recognized testing laboratory
10.8 to 10.11 Reserved
10.12(88) Construction work
10.13 to 10.18 Reserved
10.19(88) Special provisions for air contaminants
10.20(88) Adoption by reference

CHAPTERS 11 to 25
Reserved

CHAPTER 26
CONSTRUCTION SAFETY AND HEALTH RULES
26.1(88) Adoption by reference

CHAPTER 27
Reserved

CHAPTER 28
OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE
28.1(88) Adoption by reference

CHAPTER 29
SANITATION AND SHELTER RULES FOR RAILROAD EMPLOYEES
29.1(88) Definitions
29.2(88) Water supply
29.3(88) Toilets
29.4(88) Eating places and lunchrooms
29.5(88) Sleeping accommodations
29.6(88) Cleanliness and maintenance
29.7(88) Conflicts resolved

CHAPTER 30
Reserved

CHILD LABOR

CHAPTER 31
Reserved

CHAPTER 32
CHILD LABOR

32.1(92)	Definitions
32.2(92)	Permits and certificates of age
32.3 and 32.4	Reserved
32.5(92)	Other work
32.6	Reserved
32.7(92)	Workweek
32.8(92)	Terms
32.9 and 32.10	Reserved
32.11(92)	Civil penalty calculation
32.12(92)	Civil penalty procedures
32.13 to 32.16	Reserved
32.17(92)	Definitions

CHAPTER 33
Reserved

CHAPTER 34
CIVIL PENALTIES

34.1(91A)	Civil penalties for Iowa Code chapter 91A violations
34.2(91A)	Investigation
34.3(91A)	Calculation of penalty
34.4(91A)	Settlement opportunity
34.5(91A)	Notice of penalty assessment; contested case proceedings
34.6(91A)	Judicial review

CHAPTER 35
WAGE PAYMENT COLLECTION

35.1(91A)	Definitions
35.2(91A)	Right of private action
35.3(91A)	Filing a claim
35.4(91A)	Investigation
35.5(91A)	Legal action on wage claims

CHAPTER 36
DISCRIMINATION AGAINST EMPLOYEES

36.1(91A)	Definitions
36.2(91A)	Employee rights
36.3(91A)	Purposes
36.4(91A)	General requirements
36.5(91A)	Unprotected activities distinguished
36.6(91A)	Complaint under or related to the Act
36.7(91A)	Proceedings under or related to the Act
36.8(91A)	Filing of complaint for discrimination or discharge
36.9(91A)	Withdrawal of complaints

36.10(91A) Arbitration or other agency proceedings
36.11(91A) Decision of the commissioner

CHAPTER 37
Reserved

CHAPTER 38
EMPLOYMENT AGENCY LICENSING

38.1(94A) Definitions
38.2(94A) Application and license
38.3(94A) Non-employment agency activity
38.4(94A) Complaints
38.5(17A,94A,252J) Denials, revocations, reprimands and suspensions
38.6(94A) Permissible fees charged by agency
38.7 Reserved
38.8(94A) Contracts and fee schedules

CHAPTERS 39 to 50
Reserved

RAILROADS

CHAPTERS 51 to 60
Reserved

AMUSEMENT PARKS AND RIDES

CHAPTER 61
ADMINISTRATION OF IOWA CODE CHAPTER 88A

61.1(88A) Purpose, scope and definitions
61.2(88A) Administration
61.3(88A) Exemptions

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND CONCESSION BOOTHS

62.1(88A) Purpose, scope and definitions
62.2(88A) Design criteria
62.3(88A) Concession booth requirements
62.4(88A) Walking surfaces, access and egress
62.5 and 62.6 Reserved
62.7(88A) Signal systems
62.8(88A) Hazardous materials
62.9 Reserved
62.10(88A) General environment
62.11(88A) Medical and first aid
62.12(88A) Fire protection
62.13(88A) Compressed gas and air equipment
62.14 Reserved
62.15(88A) Machinery and machine guarding
62.16 Reserved
62.17(88A) Welding, cutting and brazing
62.18(88A) Operations
62.19(88A) Electrical

CHAPTERS 63 and 64
Reserved

ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT

CHAPTER 65
ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

65.1(89A) Definitions
65.2(89A) Purpose and authority of board
65.3(21,89A) Organization of board
65.4(21,89A) Public meetings
65.5(89A) Official communications

CHAPTER 66
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES
BY THE ELEVATOR SAFETY BOARD

66.1(17A,89A) Waivers of rules
66.2(17A,89A) Applicability of rule
66.3(17A,89A) Criteria for waiver or variance
66.4(17A,89A) Filing of petition
66.5(17A,89A) Content of petition
66.6(17A,89A) Additional information
66.7(17A,89A) Notice
66.8(17A,89A) Board review procedures
66.9(17A,89A) Hearing procedures
66.10(17A,89A) Ruling
66.11(17A,89A) Public availability
66.12(17A,89A) Summary reports
66.13(17A,89A) Cancellation of a waiver
66.14(17A,89A) Violations
66.15(17A,89A) Defense
66.16(17A,89A) Judicial review

CHAPTER 67
ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

67.1(17A,89A) Petitions for rule making
67.2(17A,89A) Briefs
67.3(17A,89A) Inquiries
67.4(17A,89A) Board review procedures

CHAPTER 68
DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

68.1(17A,89A) Petition for declaratory order
68.2(17A,89A) Notice of petition
68.3(17A,89A) Intervention
68.4(17A,89A) Briefs
68.5(17A,89A) Inquiries
68.6(17A,89A) Service and filing of petitions and other papers
68.7(17A,89A) Board review procedures
68.8 Reserved
68.9(17A,89A) Refusal to issue order
68.10(17A,89A) Contents of declaratory order—effective date
68.11(17A,89A) Copies of orders
68.12(17A,89A) Effect of a declaratory order

CHAPTER 69
CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

69.1(17A,89A) Reconsideration of inspection report
69.2(17A,89A) Appeal to the board
69.3(17A,89A) Informal review
69.4(17A,89A) Delivery of notice
69.5(17A,89A) Contents of notice
69.6(17A,89A) Scope of issues
69.7(17A,89A) File transmitted to the board
69.8(17A,89A) Legal representation
69.9(17A,89A) Presiding officer
69.10(17A,89A) Service and filing
69.11(17A,89A) Time requirements
69.12(17A,89A) Waiver of procedures
69.13(17A,89A) Telephone and electronic proceedings
69.14(17A,89A) Disqualification
69.15(17A,89A) Consolidation and severance
69.16(17A,89A) Discovery
69.17(17A,89A) Subpoenas in a contested case
69.18(17A,89A) Motions
69.19(17A,89A) Settlements
69.20(17A,89A) Prehearing conference
69.21(17A,89A) Continuances
69.22(17A,89A) Withdrawals
69.23(17A,89A) Hearing procedures
69.24(17A,89A) Evidence
69.25(17A,89A) Ex parte communication
69.26(17A,89A) Interlocutory appeals
69.27(17A,89A) Decisions
69.28(17A,89A) Contested cases with no factual disputes
69.29(17A,89A) Applications for rehearing
69.30(17A,89A) Stays of board actions
69.31(17A,89A) Judicial review

CHAPTER 70
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE ELEVATOR SAFETY BOARD

70.1(22,89A) Definitions
70.2(22,89A) Statement of policy
70.3(22,89A) Requests for access to records
70.4(22,89A) Access to confidential records
70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination
70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records
70.7(22,89A) Consent to disclosure by the subject of a confidential record
70.8(22,89A) Disclosures without the consent of the subject
70.9(17A,89A) Routine use
70.10(22,89A) Consensual disclosure of confidential records
70.11(22,89A) Release to subject
70.12(21,22,89A) Availability of records
70.13(22,89A) Applicability

70.14(17A,22,89A) Personally identifiable information
70.15(17A,21,22,89A) Other groups of records
70.16(22,89A) Data processing system
70.17(22,89A) Notice to suppliers of information

CHAPTER 71
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

71.1(89A) Definitions
71.2(89A) Registration of conveyances
71.3(89A) State identification number
71.4(89A) Responsibility for obtaining permits
71.5(89A) Installation permits
71.6(89A) Construction permits
71.7(89A) Operating permits
71.8(89A) Controller upgrade permits
71.9(89A) Alteration permits
71.10(89A) Alterations
71.11(89A) Inspections
71.12(89A,252J,261,272D) Special inspector commissions
71.13(89A) State employees
71.14(89A) Safety tests
71.15(89A) Authorized companies
71.16(89A) Fees
71.17(89A) Publications available for review
71.18(89A) Other regulations affecting elevators
71.19(89A) Accidents

CHAPTER 72
CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

72.1(89A) Purpose and scope
72.2(89A) Definitions
72.3(89A) Accommodating the physically disabled
72.4(89A) Electric elevators
72.5(89A) Hydraulic elevators
72.6(89A) Power sidewalk elevators
72.7(89A) Performance-based safety code
72.8(89A) Hand and power dumbwaiters
72.9(89A) Escalators and moving walks
72.10(89A) General requirements
72.11 Reserved
72.12(89A) Wind tower lifts
72.13(89A) Alterations, repairs, replacements and maintenance
72.14 Reserved
72.15(89A) Power-operated special purpose elevators
72.16(89A) Inclined and vertical wheelchair lifts
72.17(89A) Hand-powered elevators
72.18(89A) Accommodating the physically disabled
72.19(89A) Limited-use/limited-application elevators
72.20(89A) Rack and pinion, screw-column elevators
72.21(89A) Inclined elevators
72.22(89A) Material lift elevators

72.23(89A) Elevators used for construction
72.24(89A) Construction personnel hoists

CHAPTER 73
CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

73.1(89A) Scope and definitions
73.2(89A) Hoistways
73.3(89A) Car enclosure: Passenger
73.4(89A) Car enclosure: Freight
73.5(89A) Brakes
73.6(89A) Machines
73.7(89A) Electrical protective devices
73.8(89A) Maintenance, repairs and alterations
73.9(89A) Machine rooms
73.10(89A) Pits
73.11(89A) Counterweights
73.12(89A) Car platforms and car slings
73.13(89A) Means of suspension
73.14(89A) Car safeties and speed governors
73.15(89A) Guide rails
73.16(89A) Existing hydraulic elevators
73.17(89A) Existing sidewalk elevators
73.18(89A) Existing hand elevators
73.19(89A) Power-operated special purpose elevators
73.20(89A) Inclined and vertical wheelchair lifts
73.21(89A) Handicapped restricted use elevators
73.22(89A) Escalators
73.23 Reserved
73.24(89A) Dumbwaiters

CHAPTERS 74 to 79
Reserved

BOILERS AND PRESSURE VESSELS

CHAPTER 80
BOILER AND PRESSURE VESSEL BOARD
ADMINISTRATIVE AND REGULATORY AUTHORITY

80.1(89) Definitions
80.2(21,89) Purpose of board
80.3(89) Organization of board
80.4(21,89) Public meetings
80.5(89) Official communications

CHAPTER 81
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES
BY THE BOILER AND PRESSURE VESSEL BOARD

81.1(17A,89) Waivers of rules
81.2(17A,89) Applicability of rule
81.3(17A,89) Criteria for waiver or variance
81.4(17A,89) Filing of petition
81.5(17A,89) Content of petition
81.6(17A,89) Additional information
81.7(17A,89) Notice

81.8(17A,89) Board review procedures
81.9(17A,89) Hearing procedures
81.10(17A,89) Ruling
81.11(17A,89) Public availability
81.12(17A,89) Summary reports
81.13(17A,89) Cancellation of a waiver
81.14(17A,89) Violations
81.15(17A,89) Defense
81.16(17A,89) Judicial review

CHAPTER 82
BOILER AND PRESSURE VESSEL BOARD PETITIONS FOR RULE MAKING

82.1(17A,89) Petitions for rule making
82.2(17A,89) Briefs
82.3(17A,89) Inquiries
82.4(17A,89) Board review procedures

CHAPTER 83
DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

83.1(17A,89) Petition for declaratory order
83.2(17A,89) Notice of petition
83.3(17A,89) Intervention
83.4(17A,89) Briefs
83.5(17A,89) Inquiries
83.6(17A,89) Service and filing of petitions and other papers
83.7(17A,89) Board review procedures
83.8(17A,89) Action on petition
83.9(17A,89) Refusal to issue order
83.10(17A,89) Contents of declaratory order—effective date
83.11(17A,89) Copies of orders
83.12(17A,89) Effect of a declaratory order

CHAPTER 84
CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

84.1(17A,89) Reconsideration of inspection report
84.2(17A,89) Appeal to the board
84.3(17A,89) Informal review
84.4(17A,89) Delivery of notice
84.5(17A,89) Contents of notice
84.6(17A,89) Scope of issues
84.7(17A,89) File transmitted to the board
84.8(17A,89) Legal representation
84.9(17A,89) Presiding officer
84.10(17A,89) Service and filing
84.11(17A,89) Time requirements
84.12(17A,89) Waiver of procedures
84.13(17A,89) Telephone and electronic proceedings
84.14(17A,89) Disqualification
84.15(17A,89) Consolidation and severance
84.16(17A,89) Discovery
84.17(17A,89) Subpoenas in a contested case
84.18(17A,89) Motions
84.19(17A,89) Settlements

84.20(17A,89) Prehearing conference
84.21(17A,89) Continuances
84.22(17A,89) Withdrawals
84.23(17A,89) Hearing procedures
84.24(17A,89) Evidence
84.25(17A,89) Ex parte communication
84.26(17A,89) Interlocutory appeals
84.27(17A,89) Decisions
84.28(17A,89) Contested cases with no factual disputes
84.29(17A,89) Applications for rehearing
84.30(17A,89) Stays of board actions
84.31(17A,89) Judicial review

CHAPTER 85
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
OF THE BOILER AND PRESSURE VESSEL BOARD

85.1(22,89) Definitions
85.2(22,89) Statement of policy
85.3(22,89) Requests for access to records
85.4(22,89) Access to confidential records
85.5(22,89) Requests for treatment of a record as a confidential record and its withholding from examination
85.6(22,89) Procedure by which additions, dissents, or objections may be entered into certain records
85.7(22,89) Consent to disclosure by the subject of a confidential record
85.8(22,89) Disclosures without the consent of the subject
85.9(17A,89) Routine use
85.10(22,89) Consensual disclosure of confidential records
85.11(22,89) Release to subject
85.12(21,22,89) Availability of records
85.13(22,89) Applicability
85.14(17A,22,89) Personally identifiable information
85.15(17A,22,89) Other groups of records
85.16(22,89) Data processing system
85.17(22,89) Notice to suppliers of information

CHAPTERS 86 to 89
Reserved

CHAPTER 90
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

90.1(89) Purpose
90.2(89,261,252J,272D) Definitions
90.3(89) Iowa identification numbers
90.4 Reserved
90.5(89) Preinspection owner or user preparation
90.6(89) Inspections
90.7(89) Fees
90.8(89) Certificate
90.9(89,252J,261) Special inspector commissions
90.10(89) Quality reviews, surveys and audits
90.11(89) Notification of explosion
90.12(89) Publications available for review

90.13(89) Notice prior to installation
90.14(89) Temporary boilers

CHAPTER 91
GENERAL REQUIREMENTS FOR ALL OBJECTS

91.1(89) Codes adopted by reference
91.2(89) Safety appliance
91.3(89) Pressure-reducing valves
91.4(89) Blowoff equipment
91.5(89) Location of discharge piping outlets
91.6(89) Pipe, valve, and fitting requirements
91.7(89) Electric steam generator
91.8(89) Alterations, retrofits and repairs to objects
91.9(89) Boiler door latches
91.10(89) Clearance
91.11(89) Fall protection
91.12(89) Exit from rooms containing objects
91.13(89) Air and ventilation
91.14(89) Condensate return tank
91.15(89) Conditions not covered
91.16 Reserved
91.17(89) English language and U.S. customary units required
91.18(89) National Board registration
91.19(89) ASME stamp
91.20(89) CSD-1 Report

CHAPTER 92
POWER BOILERS

92.1(89) Scope
92.2(89) Codes adopted by reference
92.3 Reserved
92.4(89) Maximum allowable working pressure for steel boilers
92.5(89) Maximum allowable working pressure and temperature for cast iron headers and mud drums
92.6(89) Rivets
92.7(89) Safety valves
92.8(89) Boiler feeding
92.9(89) Water level indicators
92.10(89) Pressure gages
92.11(89) Steam stop valves
92.12(89) Blowoff connection

CHAPTER 93
MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

93.1(89) Scope
93.2(89) Codes adopted by reference
93.3(89) Maximum working pressure
93.4(89) Safety valves
93.5(89) Steam stop valves
93.6(89) Water gages
93.7(89) Feedwater supply
93.8(89) Blowoff

93.9(89) Washout openings
93.10(89) Fixtures and fittings

CHAPTER 94
STEAM HEATING BOILERS, HOT WATER HEATING BOILERS AND
HOT WATER SUPPLY BOILERS

94.1(89) Scope
94.2(89) Codes adopted by reference
94.3(89) General requirements
94.4(89) Steam heating boilers installed before July 1, 1960
94.5(89) Hot water heating boilers installed before July 1, 1960
94.6(89) Hot water supply boilers installed before July 1, 1960

CHAPTER 95
WATER HEATERS

95.1(89) Scope
95.2(89) Recognized standard
95.3(89) Installation
95.4(89) Temperature and pressure relief valves
95.5(89) Shutoff valves prohibited
95.6(89) Thermal expansion
95.7(89) Stop valves
95.8(89) Carbonization
95.9(89) Leaks
95.10(89) Flues
95.11(89) Tanks
95.12(89) Galvanized pipes, valves, and fittings

CHAPTER 96
UNFIRED STEAM PRESSURE VESSELS

96.1(89) Codes adopted by reference
96.2(89) Objects installed prior to July 1, 1983

CHAPTERS 97 to 109
Reserved

RIGHT TO KNOW

CHAPTER 110
HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—
GENERAL PROVISIONS

110.1(88,89B) Purpose, scope and application
110.2(88,89B) Definitions
110.3(88,89B) Hazard determination
110.4(88,89B) Labels and other forms of warning
110.5(88,89B) Material safety data sheets
110.6(88,89B) Trade secrets

CHAPTERS 111 to 129
Reserved

CHAPTER 130
COMMUNITY RIGHT TO KNOW

130.1(89B) Employer's duty
130.2(89B) Records accessibility

130.3(89B) Application for exemption
130.4(89B) Burden of proof and criteria
130.5(89B) Formal ruling
130.6(89B) Request for information
130.7(89B) Filing with division
130.8(89B) Grounds for complaint against the employer
130.9(89B) Investigation or inspection upon complaint
130.10(89B) Order to comply
130.11(30,89B) Relationship to Emergency Planning and Community Right-to-know Act
130.12(30,89B) Information to county libraries

CHAPTERS 131 to 139
Reserved

CHAPTER 140
PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW
140.1(89B) Signs required and adoption by reference
140.2(89B) Employer variance applications
140.3(89B) Agreement between an employer and fire department
140.4(89B) Significant amounts
140.5(89B) Information submitted to local fire department
140.6(89B) Recommended communications
140.7(89B) Procedure for noncompliance
140.8(89B) Notice of noncompliance
140.9(30,89B) Relationship to Emergency Planning and Community Right-to-know Act

CHAPTERS 141 to 149
Reserved

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION
150.1(91C) Scope
150.2(91C) Definitions
150.3(91C) Registration required
150.4(91C) Application
150.5(91C) Amendments to application
150.6(91C) Fee
150.7(91C) Registration number issuance
150.8(91C) Workers' compensation insurance cancellation notifications
150.9(91C) Investigations and complaints
150.10(91C) Citations/penalties and appeal hearings
150.11(91C) Revocation of registrations and appeal hearings
150.12(91C) Concurrent actions
150.13 to 150.15 Reserved
150.16(91C) Bond release

CHAPTERS 151 to 154
Reserved

CHAPTER 155
ASBESTOS REMOVAL AND ENCAPSULATION

155.1(88B) Definitions
155.2(88B) Permit application procedures
155.3(88B) Other asbestos regulations
155.4(88B) Asbestos project records
155.5(88B) Ten-day notices
155.6(88B) License application procedures
155.7(88B) Duplicate permits and licenses
155.8(17A,88B,252J,261) Denial, suspension and revocation
155.9(17A,88B) Contested cases

CHAPTERS 156 to 159
Reserved

CHAPTER 160
EMPLOYER REQUIREMENTS RELATING TO
NON-ENGLISH SPEAKING EMPLOYEES

160.1(91E) Purpose and scope
160.2(91E) Definitions
160.3(91E) Comprehension of employment
160.4(91E) Interpreters
160.5(91E) Community services referral agent
160.6(91E) Active recruitment of non-English speaking employees
160.7(91E) Employee's return to location of recruitment
160.8(91E) Inspections and investigations
160.9(91E) Exemptions
160.10(91E) Enforcement and penalties

CHAPTERS 161 to 169
Reserved

WRESTLING AND BOXING

CHAPTER 170
OPERATIONS OF ADVISORY BOARD

170.1(90A) Scope
170.2(90A) Membership
170.3(90A) Time of meetings
170.4(90A) Notification of meetings
170.5(90A) Attendance and participation by the public
170.6(90A) Quorum and voting requirements
170.7(90A) Minutes, transcripts and recording of meetings

CHAPTER 171
GRANT APPLICATIONS AND AWARDS

171.1(90A) Scope
171.2(90A) Application process
171.3(90A) Grant process
171.4(90A) Evaluation
171.5(90A) Termination
171.6(90A) Financial management
171.7(90A) Adjustments and collections

CHAPTER 172
PROFESSIONAL WRESTLING

172.1(90A) Limitation of bouts
172.2(90A) Fall
172.3(90A) Out-of-bounds
172.4(90A) Disqualification
172.5(90A) Failure to break hold
172.6(90A) Prohibition against hanging on
172.7(90A) Abusing referee
172.8(90A) Prohibited materials in ring
172.9(90A) Contestants' grooming
172.10(90A) Time between falls
172.11(90A) Contestants' arrival
172.12(90A) Contestants of the opposite sex prohibited
172.13(90A) Separation of boxing and wrestling
172.14(90A) Public safety
172.15(90A) Health of wrestler
172.16(90A) Wrestling outside of ring
172.17(90A) Advertising
172.18(90A) Responsibility of promoter

CHAPTER 173
PROFESSIONAL BOXING

173.1(90A) Limitation of rounds
173.2(90A) Weight restrictions
173.3(90A) Age restrictions
173.4(90A) Injury
173.5(90A) Knockdown
173.6(90A) Limitation on number of bouts
173.7(90A) Contestants' arrival
173.8(90A) Persons allowed in the ring
173.9(90A) Protection of hands
173.10(90A) Scoring
173.11(90A) Gloves
173.12(90A) Proper attire
173.13(90A) Use of substances
173.14(90A) "Down"
173.15(90A) Foul
173.16(90A) Penalties
173.17(90A) Weight classes
173.18(90A) Attendance of commissioner
173.19(90A) Weighing of contestants
173.20(90A) Officials
173.21(90A) General requirements
173.22(90A) Public safety
173.23(90A) Excessive coaching
173.24(90A) Abusive language
173.25(90A) Locker rooms
173.26(90A) Contracts
173.27(90A) Ring requirements
173.28(90A) Ring posts
173.29(90A) Ropes

173.30(90A) Ring floor
173.31(90A) Bell
173.32(90A) Gloves
173.33(90A) Referee's duties
173.34(90A) Chief second
173.35(90A) Naming referee
173.36(90A) Reasons for stopping bout
173.37(90A) Forfeit of purse
173.38(90A) Inspection for foreign substances
173.39(90A) Shaking hands
173.40(90A) Assessing fouls
173.41(90A) Delaying prohibited
173.42(90A) Count
173.43(90A) Intentional foul
173.44(90A) Use of the ropes
173.45(90A) Attending ring physician
173.46(90A) Technical knockout
173.47(90A) Timekeeper
173.48(90A) Seconds
173.49(90A) Requirements for seconds
173.50(90A) Use of water
173.51(90A) Stopping the fight
173.52(90A) Removing objects from ring
173.53(90A) Decision
173.54(90A) Blood-borne disease testing

CHAPTER 174
ELIMINATION TOURNAMENTS

174.1(90A) Purpose and scope
174.2(90A) Bouts, rounds and rest periods
174.3(90A) Protective equipment
174.4(90A) Weight restrictions
174.5(90A) Down
174.6(90A) Suspension
174.7(90A) Training requirements
174.8(90A) Judges
174.9(90A) Public safety
174.10(90A) Impartiality of timekeeper
174.11(90A) Ringside
174.12(90A) Physical examination—female contestants
174.13(90A) Contestants of opposite sex prohibited

CHAPTER 175
AMATEUR BOXING

175.1(90A) Purpose
175.2(90A) Application
175.3(90A) Verification
175.4(90A) Forms

CHAPTER 176
PROFESSIONAL KICKBOXING

176.1(90A) Scope and purpose
176.2(90A) WKA rules adopted by reference

176.3(90A) Professional boxing rules adopted by reference
176.4(90A) Additional provisions

CHAPTER 177
PROFESSIONAL SHOOT FIGHTING

177.1(90A) Scope and purpose
177.2(90A) Responsibilities of promoter
177.3(90A) Equipment specifications
177.4(90A) Event
177.5(90A) Contestants
177.6(90A) Procedural rules
177.7(90A) Decision
177.8(90A) Forfeit of purse
177.9 Reserved
177.10(90A) Health insurance

CHAPTERS 178 to 214
Reserved

MINIMUM WAGE

CHAPTER 215
MINIMUM WAGE SCOPE AND COVERAGE

215.1(91D) Requirement to pay
215.2(91D) Initial employment wage rate
215.3(91D) Definitions
215.4(91D) Exceptions
215.5(91D) Interpretative guidelines

CHAPTER 216
RECORDS TO BE KEPT BY EMPLOYERS

216.1(91D) Form of records—scope of rules
216.2(91D) Employees subject to minimum wage
216.3(91D) Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to 875—subrule 215.4(1)
216.4(91D) Posting of notices
216.5(91D) Records to be preserved three years
216.6(91D) Records to be preserved two years
216.7(91D) Place for keeping records and their availability for inspection
216.8(91D) Computations and reports
216.9(91D) Petitions for exceptions
216.10 Reserved

EMPLOYEES SUBJECT TO MISCELLANEOUS EXEMPTIONS

216.11 to 216.26 Reserved
216.27(91D) Board, lodging, or other facilities
216.28(91D) Tipped employees
216.29 Reserved
216.30(91D) Learners, apprentices, messengers, students, or persons with a disability employed under special certificates as provided in the federal Fair Labor Standards Act, 29 U.S.C. 214
216.31(91D) Industrial homeworkers

216.32 Reserved
216.33(91D) Employees employed in agriculture pursuant to 875—subrule 215.4(6)

CHAPTER 217
WAGE PAYMENTS

217.1 Reserved
217.2(91D) Purpose and scope
217.3(91D) "Reasonable cost"
217.4(91D) Determinations of "reasonable cost"
217.5(91D) Determinations of "fair value"
217.6(91D) Effects of collective bargaining agreements
217.7(91D) Request for review of tip credit
217.8 to 217.24 Reserved
217.25(91D) Introductory statement
217.26 Reserved
217.27(91D) Payment in cash or its equivalent required
217.28 Reserved
217.29(91D) Board, lodging, or other facilities
217.30(91D) "Furnished" to the employee
217.31(91D) "Customarily" furnished
217.32(91D) "Other facilities"
217.33 and 217.34 Reserved
217.35(91D) "Free and clear" payment; "kickbacks"
217.36(91D) Payment where additions or deductions are involved
217.37(91D) Offsets
217.38(91D) Amounts deducted for taxes
217.39(91D) Payments to third persons pursuant to court order
217.40(91D) Payments to employee's assignee
217.41 to 217.49 Reserved
217.50(91D) Payments to tipped employees
217.51(91D) Conditions for taking tip credits in making wage payments
217.52(91D) General characteristics of "tips"
217.53(91D) Payments which constitute tips
217.54(91D) Tip pooling
217.55(91D) Examples of amounts not received as tips
217.56(91D) "More than $30 a month in tips"
217.57(91D) Receiving the minimum amount "customarily and regularly"
217.58(91D) Initial and terminal months
217.59(91D) The tip wage credit

CHAPTER 218
EMPLOYEES EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESPERSON

218.1(91D) Executive
218.2(91D) Administrative
218.3(91D) Professional
218.4 Reserved
218.5(91D) Outside salesperson
218.6(91D) Special provision for motion picture producing industry
218.7 to 218.100 Reserved

BONA FIDE EXECUTIVE CAPACITY

218.101(91D) General
218.102(91D) Management
218.103(91D) Primary duty
218.104(91D) Department or subdivision
218.105(91D) Two or more other employees
218.106(91D) Authority to hire or fire
218.107(91D) Discretionary powers
218.108(91D) Work directly and closely related
218.109(91D) Emergencies
218.110(91D) Occasional tasks
218.111(91D) Nonexempt work generally
218.112(91D) Percentage limitations on nonexempt work
218.113(91D) Sole-charge exception
218.114(91D) Exception for owners of 20 percent interest
218.115(91D) Working supervisor
218.116(91D) Trainees, executive
218.117(91D) Amount of salary required
218.118(91D) Salary basis
218.119(91D) Special proviso for high-salaried executives
218.120 to 218.200 Reserved

BONA FIDE ADMINISTRATIVE CAPACITY

218.201(91D) Types of administrative employees
218.202 Reserved
218.203(91D) Nonmanual work
218.204 Reserved
218.205(91D) Directly related to management policies or general business operations
218.206(91D) Primary duty
218.207(91D) Discretion and independent judgment
218.208 Reserved
218.209(91D) Percentage limitations on nonexempt work
218.210(91D) Trainees, administrative
218.211(91D) Amount of salary or fees required
218.212(91D) Salary basis
218.213(91D) Fee basis
218.214(91D) Special proviso for high-salaried administrative employees
218.215(91D) Elementary or secondary schools and other educational establishments and institutions
218.216 to 218.300 Reserved

BONA FIDE PROFESSIONAL CAPACITY

218.301(91D) General
218.302(91D) Learned professions
218.303(91D) Artistic professions
218.304(91D) Primary duty
218.305(91D) Discretion and judgment
218.306(91D) Predominantly intellectual and varied
218.307(91D) Essential part of and necessarily incident to
218.308 Reserved
218.309(91D) Twenty percent nonexempt work limitation
218.310(91D) Trainees, professional
218.311(91D) Amount of salary or fees required

218.312(91D) Salary basis
218.313(91D) Fee basis
218.314(91D) Exception for physicians, lawyers, and teachers
218.315(91D) Special proviso for high-salaried professional employees
218.316 to 218.499 Reserved

OUTSIDE SALESPERSON

218.500(91D) Definition of "outside salesperson"
218.501(91D) Making sales or obtaining orders
218.502(91D) Away from employer's place of business
218.503(91D) Incidental to and in conjunction with sales work
218.504(91D) Promotion work
218.505(91D) Driver salespersons
218.506(91D) Nonexempt work generally
218.507(91D) Twenty percent limitation on nonexempt work
218.508(91D) Trainees, outside salespersons
218.509 to 218.599 Reserved

SPECIAL PROBLEMS

218.600(91D) Combination exemptions
218.601(91D) Special provision for motion picture producing industry
218.602(91D) Special proviso concerning executive and administrative employees in multistore retailing operations

CHAPTER 219
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO DOMESTIC SERVICE

219.1 Reserved
219.2(91D) Purpose and scope
219.3(91D) Domestic service employment
219.4(91D) Babysitting services
219.5(91D) Casual basis
219.6(91D) Companionship services for the aged or infirm
219.7 to 219.99 Reserved
219.100(91D) Application of minimum wage and overtime provisions
219.101(91D) Domestic service employment
219.102(91D) Live-in domestic service employees
219.103(91D) Babysitting services in general
219.104(91D) Babysitting services performed on a casual basis
219.105(91D) Individuals performing babysitting services in their own homes
219.106(91D) Companionship services for the aged or infirm
219.107(91D) Yard maintenance workers
219.108 Reserved
219.109(91D) Third-party employment
219.110(91D) Record-keeping requirements

CHAPTER 220
APPLICATION OF THE FAIR LABOR STANDARDS ACT
TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

220.1(91D) Definitions
220.2(91D) Purpose and scope
220.3 to 220.10 Reserved
220.11(91D) Exclusion for elected officials and their appointees
220.12(91D) Exclusion for employees of legislative branches

220.13 to 220.19 Reserved
220.20(91D) Introduction
220.21(91D) Compensatory time and compensatory time off
220.22 to 220.26 Reserved
220.27(91D) Payments for unused compensatory time
220.28(91D) Other compensatory time
220.29 Reserved

OTHER EXEMPTIONS

220.30 Reserved
220.31(91D) Substitution—federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3)
220.32 to 220.49 Reserved

RECORD KEEPING

220.50(91D) Records to be kept of compensatory time
220.51 to 220.99 Reserved

VOLUNTEERS

220.100(91D) General
220.101(91D) "Volunteer" defined
220.102(91D) Employment by the same public agency
220.103(91D) "Same type of services" defined
220.104(91D) Private individuals who volunteer services to public agencies
220.105(91D) Mutual aid agreements
220.106(91D) Payment of expenses, benefits, or fees
220.107 to 220.199 Reserved

FIRE PROTECTION AND LAW ENFORCEMENT
EMPLOYEES OF PUBLIC AGENCIES

220.200 to 220.220 Reserved
220.221(91D) Compensable hours of work
220.222(91D) Sleep time
220.223(91D) Meal time
220.224 Reserved
220.225(91D) Early relief
220.226(91D) Training time

CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150
CONSTRUCTION CONTRACTOR REGISTRATION

[Prior to 10/21/98, see 347—Ch 150]

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than $2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Commissioner" means the labor commissioner of the division of labor services of the workforce development department or the commissioner's designee.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, "construction" includes asbestos abatement.

"Contractor" means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

"Division" means the division of labor services of the workforce development department.

"File" means deliver to the division.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as, but not limited to, electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"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.

[**ARC 8812B**, IAB 6/2/10, effective 7/1/10]

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. A joint venture is an independent entity and shall be registered independently.

875—150.4(91C) Application. Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the applicable information and documents specified in this rule.

150.4(1) *Name.* The name of the contractor.

150.4(2) *Place of business.* The complete mailing address of the principal place of business of the contractor.

150.4(3) *Telephone number.* The business telephone number of the contractor.

150.4(4) *Business classification.* The type of business entity of the contractor (i.e., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) *Ownership information.*

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) *Workers' compensation coverage information.*

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the division of labor as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) *Account number.* The employer account number or special contractor number issued by the unemployment insurance services division of the workforce development department prior to making application for a contractor's registration number.

150.4(8) *Business description.* A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) *Fee exemption.* An exemption from fee may be requested if the contractor meets the requirements of and provides information specified in subrule 150.6(3).

150.4(10) *Social security number.* The contractor, if a natural person, shall include the contractor's social security number.

150.4(11) *Out-of-state contractor bond.* An out-of-state contractor shall:

a. File a surety bond in the amount of $25,000 for a one-year period that is prepared using the bond form provided by the division, or

b. Provide a statement that the contractor is prequalified to bid on projects for the department of transportation pursuant to Iowa Code section 314.1.

[**ARC 8812B**, IAB 6/2/10, effective 7/1/10]

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the commissioner of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown the commissioner may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications shall not be permitted where a change occurs in the business classification, such as, but not limited to, a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) *New applications.* A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

150.6(2) *Renewal applications.* A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is received by the division.

150.6(3) *Fee exemption.* A contractor shall not be required to pay the fee if the application is submitted with a completed and accurate Fee Exemption Application Form. The Fee Exemption Application Form is available from the division.

150.6(4) *Amendments to applications.* A fee is not required for a permissible amendment to an application.

[**ARC 7876B**, IAB 6/17/09, effective 7/1/09; **ARC 8035B**, IAB 8/12/09, effective 9/16/09]

875—150.7(91C) Registration number issuance. Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a registration number. The registration number will consist of the letter "C" followed by six unique digits.

875—150.8(91C) Workers' compensation insurance cancellation notifications.

150.8(1) *Insurance company coverage.* The division shall be notified by the insurance company carrying the contractor's workers' compensation insurance at the time of cancellation. The notice shall contain:

a. The name of the insurance carrier;

b. The name of the insured contractor; and

c. The date the workers' compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) Investigations and complaints.

150.9(1) *Investigations.* Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor's establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) *Complaints.* Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant's name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant's identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) Citations/penalties and appeal hearings.

150.10(1) *Citations.* The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

a. The requirement that the contractor be registered;

b. The requirement that the contractor's registration information be substantially complete and accurate; or

c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) *Penalties.* If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than $500 in the case of the first violation and not more than $5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) *Appeal.* The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) *Reason for revocation.* The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) *Notice of revocation.* The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) *Hearing.* The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) *Hearing procedures.* Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) *Decision.* The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) *Effective date of revocation.* Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) *Suspension.* The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) *Appeal.* The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) *Appeal procedures.* The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) *Effect of revocation.* A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(11) *Relinquishing registration certificate.* A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.14(91C) Project bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.15(91C) Blanket bonds. Rescinded IAB 6/2/10, effective 7/1/10.

875—150.16(91C) Bond release.

150.16(1) *Notifications.* Prior to releasing a bond, the commissioner will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) *Conditions for release.* A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C as amended by 2010 Iowa Acts, House File 2522.

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◊ Two or more ARCs

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MACHINERY
See also AGRICULTURE: Equipment/Machinery
Carriers, movement permits **761**—511.7, 511.9
Taxation, *see TAXATION: Sales and Use*

MAGISTRATES
Retirement **495**—5.2(4)

MAMMALS
See also ANIMALS
Collection/rehabilitation permits **571**—ch 111
Endangered species **571**—ch 77

MANAGEMENT DEPARTMENT
Address **541**—1.6
Affirmative action, contract compliance **541**—ch 4
Appeal board, *see APPEAL BOARD, STATE*
Customer council, DAS **541**—ch 12
Declaratory orders **541**—ch 6
Definitions **541**—1.5, 4.4, 8.1
Director duties, committees **289**—1.1(1)*b*; **545**—1.5
Empowerment board division **349**—1.5
Grants enterprise management system (GEMS) **541**—ch 11
Local government innovation fund committee **541**—ch 15
Organization **541**—ch 1
Records, *generally*, public/fair information **541**—ch 8
Reports **541**—4.5(3), 4.6, 4.8
Rule making **541**—chs 5, 7
Sanctions **541**—4.7
Small business, procurement policies **541**—ch 10

MANICURIST
See BARBERS: Schools: Curriculum; COSMETOLOGY AND COSMETOLOGISTS

MANUFACTURED HOMES
See BUILDINGS: Building Code; HOMES, HOUSING

MANUFACTURERS
See INDUSTRY

MARIJUANA
Abuse, children **441**—175.21
Plants, eradication **661**—ch 28
Stamp tax **701**—ch 91

MARINES
See MILITARY

MARKETS
See FOOD subheadings Establishments; Farmers' Markets; LIVESTOCK: Movement

MARRIAGE
Certificates, *see Records below*
Common law **701**—39.4(3), 73.25

Dissolution/annulment
Insurance rights **191**—29.2(4)
IPERS benefits **495**—14.4, 14.16

Property, military tax exemption **701**—80.2(2)*k–m,o,p*
Records
See also VITAL STATISTICS
Corrections **641**—102.1(3)
Data, statistical **641**—96.5
Definition **641**—96.1
Divorce **641**—96.1, 102.1(4), 175.13(2)*b*, 175.14(2)*a*
Legitimation, certificate reissuance **641**—100.4
Registration, delayed **641**—99.13

Therapists, marital/family **441**—77.26(1); **641**—chs 192–195; **645**—4.7–4.16, 5.3, 31.1–31.5, 31.8, 31.10, 31.12, 31.16–31.18, chs 32, 33, *see also BEHAVIORAL SCIENCE BOARD*

MASSAGE THERAPY
*See also PROFESSIONAL LICENSURE DIVISION**
Abuse, identification/reporting **645**—131.8(4)
Address/name change **645**—4.4(2,3), 134.2(24)
Board
Address **645**—4.4(1), 131.2(1), 132.2(3)
Authority **645**—4.3(7)
Discipline **645**—4.2(3), 4.3(7)*f*, ch 134
Hearings **645**—4.10(2,3), 4.15(3,4), 5.8(9), 134.5(4)
Meetings **645**—4.3, 4.6

Child support noncompliance **641**—ch 192; **645**—4.16(1)
Continuing education **645**—4.3(7)*a*, 4.11, 4.12, 4.13"2," 5.8(10), 131.8(2–4), 131.14(3), ch 133, 134.1(2)*e–g*, 134.2(21)
Debts, state **641**—ch 194; **645**—4.16(3)
Definitions **645**—4.1, 131.1, 132.1, 133.1, 134.1
Disease prevention **645**—134.2(29)
Impaired practitioner review committee **641**—ch 193; **645**—134.2(31)
Licenses
Applications **645**—131.2, 131.6, 131.8
Certificates/wallet cards **645**—4.8, 4.9, 5.8(6), 131.8(4–7)
Denial **641**—192.2, 194.2, 195.2; **645**—4.10
Endorsement **645**—131.6
Examinations **645**—4.15, 131.2(7), 131.4, 131.5(1), 131.6, 131.14(3)*b*(3)
Fees **641**—192.2(5), 192.3(5), 195.3(7); **645**—5.8, 131.8(7)
Inactive **645**—131.1, 131.8(8), 131.14, 133.1, 134.2(25,30)
Reactivation **645**—5.8(5), 131.14
Reciprocity **645**—4.7
Reinstatement **641**—192.3(5,7), 194.2(5), 195.3(7); **645**—131.15
Renewal **641**—192.2, 192.3(5), 194.2, 195.2, 195.3(7); **645**—4.13"3," 5.8(2,4), 131.2(8), 131.8
Suspension/revocation **641**—192.3, 194.3, 195.3; **645**—134.2(13,25,30), 134.3
Temporary **645**—5.8(3), 131.5

Loans, student, noncompliance **641**—ch 195; **645**—4.16(2)

*Rules **645**—chs 4, 6–18 apply to all professional licensure boards

Schools **645**—ch 132, 134.5(5)
Violations **645**—ch 134

MEAT
Beef promotion **101**—1.1, *see also BEEF INDUSTRY COUNCIL*
Food preparation **481**—31.1(2), 31.3, 31.12(2)*d*
Packaging **481**—31.1(3); **701**—18.7(1,2)
Processing
See also LIVESTOCK: Dead, Disposal
Beef/pork reports **721**—4.2(4)
Condemned carcasses **21**—76.8(3)
Decharacterization/transportation **21**—76.8(3), 76.9, 76.10
Deer **571**—115.7, 116.2, 116.5–116.7
Forms/marks **21**—76.6, 76.9
Inspections **21**—1.5(4), 76.4, 76.6, 76.8, 76.13
Occupational safety, child labor **875**—32.8(9)
Pet food **21**—ch 42, 76.8, 76.10(2), 76.11(2)
Records **21**—76.11
Registration, business **21**—76.7
Standards **21**—76.1, 76.4; **481**—31.3; **567**—62.4(8,32)

Seafood **567**—62.4(8), *see also Food Preparation above*
Smokehouses **567**—23.4(9)
Taxation, sales, exemptions
Food coupon purchases **701**—20.1(1)*e*
Packaging **701**—18.7(1,2)
Poultry **701**—17.9(2)
Producers **701**—18.9

MEDIA
See PUBLICATIONS; RADIO; TELEVISION

MEDIATION
Dentists/patients, disputes **650**—ch 32
Farmers **61**—ch 17, *see also AGRICULTURE*
Public employees bargaining, *see PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)*

MEDICAID
See HUMAN SERVICES DEPARTMENT; INSURANCE: Accident/Health

MEDICAL ASSISTANCE
See also MEDICARE
Generally **441**—chs 75–85, 88–92; **701**—20.8, 20.9(3)*e*, 20.10, *see also HUMAN SERVICES DEPARTMENT*
Audits **441**—79.4; **481**—ch 73
Investigations **481**—chs 72–75, 90
Renal disease **441**—78.1(12), 78.3(10)

MEDICAL EXAMINERS
County (CME)
Autopsies **641**—101.1, ch 126, 127.3
Certificate, death **641**—99.12(2), 101.1, 101.2, 101.8, 102.1, 127.5
Cremation, permit **641**—127.6
Deputies **641**—127.8, 127.9
Indemnification **641**—127.11
Investigators (CME-I) **641**—127.1, 127.7
Jurisdiction **641**—101.4(1)*b*, 127.2

Reimbursement **641**—127.2(5)*b*, 127.4, 127.7(5), 127.8(4)
Retirement, benefits **495**—5.2(5)
Unclaimed bodies **641**—127.1"7"; **645**—100.8(3)

Definitions **641**—127.1
Health information, access **441**—9.10(24)*a*
Records/reports **441**—9.10(24); **641**—1.4(1)*f*, 1.6(1)*e*, 1.16(1)*d*, 101.1, 126.3(1,3), 127.2(3), 127.3(5), 127.10
State **641**—90.4(1), 96.4(7)*b*(2), chs 124, 126, 127.3(7), 127.5(1)

MEDICAL TECHNICIANS AND PARAMEDICS
See EMERGENCY MEDICAL CARE

MEDICARE
See also MEDICAL ASSISTANCE
Definition **191**—36.4(14)
Long-term care insurance, asset preservation **191**—ch 72
Preferred provider arrangements **191**—ch 27
Supplements, insurance **191**—15.5, 36.5(8), 36.6(10), 36.7(1)*j*,*k*, ch 37, *see also INSURANCE: Accident/Health*

MEDICINE
See DRUGS

MEN
Paternity, *see PATERNITY*

MENTAL HEALTH
See also BRAIN INJURY; HUMAN SERVICES DEPARTMENT; MENTALLY RETARDED; PSYCHOLOGISTS
Abuse, examinations, payment **441**—176.16
Access plan (MHAP), *see Iowa Plan for Behavioral Health below*
Administrator, division **441**—1.3(2)*d*, 1.6
Associations, preparedness advisory committee (PAC) membership **641**—114.4(1)*u*
Board, behavioral science **645**—ch 4, 5.3, chs 31–33
Case management **441**—24.1, 24.4(9), 24.5(1)*a*, 77.29, 78.33, 79.1(8,9), 80.2(2)*g*, 88.61, 88.73(2)*c*, ch 90, 130.2(4), 130.6, 130.7
Centers
Accreditation **441**—24.5, 24.6
Case management, *see Case Management above*
Day treatment **441**—24.4(10), 78.16(6,7)
Definitions **441**—24.1
Evaluations **441**—24.4(16)
Medical assistance providers **441**—77.15, 77.33(10), 77.46(3,4), 78.16, 79.1(2)p.3, 79.1(25), 79.3(2)*d*(11), 79.16(8)
Personnel **441**—78.16(6)*c*, 78.16(7)*b*
Records/reports **441**—24.3(3), 24.5(7), 78.16(4), *see also Medical Assistance Providers this subheading above*
Services **441**—ch 24

Children
See also Institutions (MHI) below
Day treatment **441**—78.16(7), 78.31(4)*d*(7)"7," 79.1(2) p.11, 85.25(3), 85.26
Discharge **441**—88.67(8)
Emotional disturbance **441**—24.1, 24.4(9)*b*(11), 83.121
Home- and community-based services (HCBS) **441**—77.46, 78.52, 83.121–83.129, ch 90
Hospitalization **441**—78.31(4)*d*(7)"7," 85.1(2), 85.2, 85.3, 85.5–85.7, 86.14(1)
Psychiatric medical institutions (PMIC) **441**—75.1(7), 75.24(3)*b*(6), 76.12(5), 79.1(2)p.11, 79.3(2)*d*(21), 79.16(6), 80.2(2)*a*(3), 85.1(2), 85.3, 85.21–85.26, 86.7(8), 88.61, 88.63(5), 202.16; **481**—chs 8, 41
Respite care **441**—77.46(5), 78.52(5), 83.126

Waiver services, *see Home- and Community-Based Services (HCBS) this subheading above*
Youth services program **281**—ch 66

Chronic illness (CMI) **441**—ch 22, 24.1, ch 25, 77.29(1)*d*, 78.16(6)*d*, 78.16(7)*i*, 78.33, ch 90, 130.2(4), 130.6, 130.7, *see also Case Management this subheading above*
Commission (MH/MR/DD/BI) **441**—1.6, chs 22, 24
Community living, supported **441**—24.1, 24.4(12), 24.5(1), 24.6
Complaints, *see Hearings below; Providers: Services below*
Confidentiality, *see Records below*
Corrections facilities, detainees **201**—51.13(6)*d*
Counselors **441**—24.1, ch 58 Div. V; **641**—chs 193–195; **645**—4.7–4.15, 5.3, 31.1–31.3, 31.6–31.8, 31.10, 31.12, 31.16–31.18, chs 32, 33, *see also BEHAVIORAL SCIENCE BOARD; HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid); PSYCHOLOGISTS*
Counties
See also Centers above
Billings, disputes **441**—ch 15
Care facilities **481**—57.35(9), 57.49, 58.53, 62.16(6), 62.24, 65.18(5), 65.27
Client data **441**—25.41
Contracts **441**—ch 25 Div. II Preamble, 25.13(1)*b*,*d*,*h*,*p*, 25.81
CPC (central point of coordination), *see Funds: Payment, State below*
Data collection **441**—ch 25 Div. III
Diagnostic facilities **441**—ch 34
Funds, *see Funds below*
Institutions, *see Institutions (MHI) below*
Management plan **441**—ch 25 Div. II, 25.51(3)*b*, 25.52, 25.55(2), 153.51–153.53, 153.55–153.57
Patient advocates, IPERS benefits **495**—4.1(6)
Waiver requests **441**—25.81

Day treatment **441**—78.16(6)*d*, 78.31(4)*d*(7)"6," *see also Centers above; Children above*
Definitions **441**—22.1, 22.4(5), 24.1, 25.11, 25.61, 25.71, 28.1, 34.1, 38.1, 88.61, 92.1, 153.51
Developmental disabilities **441**—1.7, chs 22, 24, 25, 38, 90, 130.2(4), 130.6, 130.7, 153.51–153.58, ch 184 Div. I, *see also DISABILITIES*
Diagnostic facilities, alternative **441**—ch 34
Driver's license requirements **761**—600.4
Elderly **17**—6.6(2)*c*; **441**—85.4, 85.41–85.46
Emotional disturbance, *see Children above*
Funds
See also Medical Assistance below
Allocation **441**—ch 38
Eligibility, consumer **441**—25.20
Grants, ticket to hope program **441**—ch 58, Div. V
Incentive/efficiency pool, county requirements **441**—25.51–25.55
Payment, state **281**—34.7; **441**—153.51–153.58
Reports, expenditures **281**—34.11; **441**—25.19, 25.65(2), 25.73
Risk pool **441**—25.61–25.66, 25.71–25.77

Health care facilities, *see HEALTH CARE FACILITIES*
Hearings **441**—22.5
Homeless, community living, *see Community Living, Supported above*
Hospitals, psychiatric care **441**—24.4(13), 29.4, 78.31(1)*j*, 78.31(4)*d*, 79.1(5)*g*,*r*, 79.1(16)*b*(3,4), 80.2(2)*a*(2), 85.1–85.8, 85.41, 86.14(1), 88.65(3), 92.8; **481**—51.36, 51.53(4); **681**—12.1(3), *see also Children: Psychiatric Medical Institutions (PMIC) above; Institutions (MHI) subheadings Fire Safety, Occupancy below; Medical and Classification Center below*

Housing, *see Community Living above; Residential Care Facilities below*
Institutions (MHI)
See also MENTALLY RETARDED: Resource Centers
Generally **441**—chs 28, 29
Admissions **441**—28.1, 28.2, 29.2-29.4
Children **281**—ch 34; **441**—29.1(6), 29.2(2), *see also Children above*
Costs **281**—34.6, 34.11; **441**—29.2(3), 29.4, *see also Support/Liability, Legal Settlement this subheading below*
Debt payment, counties, credit **441**—28.13
Discharge **441**—29.6(1)*b*, 29.6(5)*e*
Donations **441**—28.9
Education/recreation **281**—ch 34; **441**—29.6(2)*d*, 29.6(4)*g*
Facilities, public use **441**—ch 2, 28.7
Medical and classification center **201**—ch 20
Medical services **441**—29.2
News releases/interviews **441**—28.6
Outpatients **441**—29.2(1)
Photographing/recording **441**—28.5
Records **61**—2.14(12); **281**—34.10, 34.12; **441**—9.12(1)*c*, 28.6(2)*b*, 28.12, 29.6(2)*e*
Rights **441**—28.4, 29.6
Substance abuse **441**—29.2(1)*b*, 88.63(5); **641**—203.11(3)
Support/liability, legal settlement **441**—28.1, 28.3, 28.12(2), 29.3, 29.4
Tours **441**—28.8
Treatment **441**—29.5, 29.6; **641**—203.11(3)
Visitors **441**—29.1, 29.7
Insurance coverage **191**—35.3(3), 36.4(16), 71.14(8)
Intermediate care facilities **481**—chs 54, 65, 85.47; **661**—205.15
Iowa Plan For Behavioral Health **441**—88.61–88.75
Managed health care, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
Medical assistance **441**—9.10(9), 75.1(7), 75.24(3)*b*(5), 76.12(5), 77.12, 77.30(6), 78.1(16,21), 78.12, 78.16, 78.27(12), 78.37(10), 79.1(2)p.6, 79.1(25), 79.3(2)*d*(18,25), ch 85, 88.5(3)*g*,*i*, 88.48(1), 88.61–88.69, 88.71–88.73, ch 92, *see also Case Management above; Centers above; Children above; Chronic Illness (CMI) above; Hospitals, Psychiatric Care above; Nursing Facilities below; Providers: Services: Outreach below; HUMAN SERVICES DEPARTMENT; PSYCHOLOGISTS*
Nursing care, in-home **441**—50.2(3), 52.1(5), ch 177; **701**—40.43
Nursing facilities **441**—79.3(2)*d*(19), 81.3(3), 81.13(9)*f*, 85.41–85.46
Patients, utility bills, nonpayment **199**—19.4(15)*d*(8), 20.4(15)*d*(9)
Providers
Accreditation **441**—ch 24
Agreement, *see Services this subheading below*
Appeals **441**—24.8
Centers, *see Centers above*
Counselors, *see Counselors above*
Counties, *see Counties above*
Definitions **441**—22.1, 24.1, 25.11
Education, loan repayment **641**—110.21
Hospitals, *see Hospitals, Psychiatric Care above*
Institutions, *see Institutions (MHI) above*
Intermediate care, *see Intermediate Care Facilities above*
Medical assistance, *see Medical Assistance above*
Medication **441**—24.3(5)*b*(5), 24.4(13)*b*(2)
Nursing facilities, *see Nursing Facilities above*
Records, *see Records below*

Reports, risk pool program **441**—25.73
Residential care, *see Residential Care Facilities below*
Rights, service recipients **441**—24.3(4)*b*(11), 24.3(5)*b*(4), 24.4(4)*a*, 24.4(8)
Services
Advocacy/education **441**—22.4(1)
Case management, *see Case Management above*
Community living, supported, *see Community Living, Supported above*
Complaints **441**—24.7
Coordination **441**—22.4(3)
Day treatment **441**—78.31(4)*d*(7)"6," *see also Centers above; Children above*
Denial/reduction/termination **441**—153.57
Eligibility **441**—153.52–153.55, 153.58
Emergency **441**—24.4(15)
Evaluation **441**—24.4(12)*b*, 24.4(16), ch 34
Hospitalization **441**—24.4(13)
Outpatient **441**—24.4(13,14), 78.31(1)*j*, 78.31(4)*d*
Outreach **441**—77.33(10), 78.37(10), 79.1(2)p.6, 83.26
Payment, *see Funds above*
Plan **441**—24.1, 24.4(3), 24.4(9)*b*(3), 24.4(12)*b*, 24.4(13)*b*
Rehabilitation **281**—56.22; **441**—22.4(2), 22.4(3)*a*(6), 22.4(6)*b*, 24.1, 24.4(10,11,13), 24.5(4)*b*, 24.6, 79.1(2)p.11
Standards **441**—ch 22, 24.2–24.4
Transportation/personal care/support **441**—22.4(4)
Treatment **441**—22.4(5)
Vocational **281**—56.22; **441**—22.4(6)
Violations, complaints **441**—24.7
Psychiatrists **441**—22.4(5), 24.1, 24.4(13), 24.4(15)*b*(3), *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
Psychologists, *see PSYCHOLOGISTS*
Records **61**—2.14(12); **441**—22.3(2), 24.3(3), 24.4(6,7), 24.5(7), 34.3(5), *see also Centers above; Institutions (MHI) above; HUMAN SERVICES DEPARTMENT*
Residential care facilities **481**—chs 41, 54, 57.4, 57.35(9), ch 62, 63.47
Respite care **441**—77.46(5), 78.34(5)*g*, 78.38(5)*g*, 78.43(3)*h*, 78.52(5)

MENTALLY RETARDED
Bills, utility, nonpayment **199**—19.4(15)*d*(8), 20.4(15)*d*(9)
Care, in-home, *see Home- and Community-Based Services (HCBS MR) Providers below; Respite Care below*
Case management **441**—24.1, 24.4(9), 24.5(1)*a*, 77.29, 78.33, 80.2(2)*g*, 83.60, 88.73(2)*c*, ch 90, 130.2(4), 130.6, 130.7, 153.53(3), 153.55, 202.2(5)
Community living, supported **441**—24.1, 24.4(12), 24.5(1), 24.6, *see also Home- and Community-Based Services (HCBS MR) Providers below*
Counties
Funds, *see Funds below*
Hospital-schools, *see Resource Centers below*
Management plan **441**—ch 25 Div. II, 83.82(4)*b*(2), 83.90, 153.51–153.56
Reports, expenditures **441**—25.19, 25.65(2)
Definitions **441**—22.1, 24.1, 25.11, 28.1, 38.1, 90.1, 153.51
Developmental disabilities **441**—1.6, 1.7, chs 22, 24, 25, 38, 90, 130.2(4), 130.6, 130.7, 153.51–153.58, ch 184 Div. I, *see also DISABILITIES*
Funds
Allocation **441**—ch 38
Eligibility, consumer **441**—25.20
Incentive/efficiency pool, county requirements **441**—25.51–25.55

Payment
Credit, county institutional **441**—28.13
State **441**—ch 25, 153.51–153.58

Reimbursement **441**—83.70, 83.90
Risk pool **441**—25.61–25.66, 25.71–25.77

Home- and community-based services (HCBS MR) providers
Appeals **441**—77.37(1)*g*, 77.37(4), 77.37(23)*f*(3)"10," 83.69
Certification **441**—77.37(10–12)
Community living, supported **441**—77.37(14,23), 78.41(1,10), 79.1(2)p.6, 79.1(15), 83.61(1)*a*,*k*, 83.66, 83.67(4)*b*, 83.70(3)
Consumer-directed attendant care **441**—77.37(21)
Contracts **441**—77.37(3)
Day care, adult **441**—77.37(25), 78.41(12), 79.1(2)p.4, 83.66
Day habilitation **441**—77.25(6)*g*, 77.37(27), 78.41(14), 83.61(1)*l*, 83.66
Definitions **441**—83.60
Eligibility, client **441**—83.61, 83.62, 83.64, 83.72
Employment
Self-directed **441**—77.37(32)
Supported **441**—77.37(16), 78.41(7), 79.1(15), 83.61(1)*g*, 83.66

Financial management **441**—77.37(28)
Health care facilities **441**—79.1(2)p.5
Home health aide **441**—77.37(20), 78.41(6), 79.1(2)p.4, 83.66
Medical monitoring/treatment, interim **441**—77.37(22), 78.41(9), 83.60, 83.61(2)*h*, 83.66
Nursing **441**—77.37(19), 78.41(5), 79.1(2)p.4, 83.66
Payment/reimbursement **441**—83.63, 83.70
Personal emergency response **441**—77.37(18), 78.41(3), 83.66
Plan, service **441**—83.67
Prevocational **441**—77.37(26), 78.41(13), 79.1(2)p.7, 83.66
Rent subsidy **265**—ch 24; **441**—83.72
Respite care **441**—77.30(5), 77.37(15), 77.39(14), 78.41(2), 79.1(2)p.5, 83.66, *see also Respite Care below*
Reviews, compliance **441**—77.37(13)
Rights, consumer **441**—77.37(1)*e*,*g*, 77.37(2,4)
Self-directed services **441**—77.37(30–32)
Staff **441**—77.37(1)*d*,*e*,*h*
Standards **441**—77.37(1,2)
Termination/denial **441**—83.68
Vehicle/home modifications **441**—77.37(17), 77.41(3)*a*, 78.41(4), 79.1(2)p.6, 79.1(17), 83.66

Hospital-schools, *see Resource Centers below*
Housing, *see Community Living, Supported above*
Intermediate care facilities **441**—9.10(9), chs 36, 54, 75.1(7)*a*, 77.37(15)*a*(2), 78.10(4)*b*, 79.1(2)p.5,9, 80.2(2)*b*, ch 82; **481**—chs 22, 54, 64, and guidelines following chapter on p.14–38; **661**—205.1, 205.15
Medical assistance, *see Case Management above; Home- and Community-Based Services (HCBS MR) Providers above; Intermediate Care Facilities above; Nursing Facilities below; Residential Care Facilities below*
Nursing facilities **441**—81.3(3), 81.13(9)*f*
Providers
See also Home- and Community-Based Services (HCBS MR) Providers above
Accreditation **441**—ch 24
Appeals **441**—24.8
Counties, *see Counties above*
Intermediate care, *see Intermediate Care Facilities above*
Medical assistance, *see HUMAN SERVICES DEPARTMENT*

Nursing facilities, *see Nursing Facilities above*
Records **441**—22.3(2), 24.3(3), 24.4(6,7), 24.5(7)
Reports, risk pool program **441**—25.73
Residential care, *see Residential Care Facilities below*
Rights, service recipients **441**—24.3(4)*b*(11), 24.3(5)*b*(4), 24.4(4)*a*, 24.4(8)
Services
Advocacy/education **441**—22.4(1)
Case management, *see Case Management above*
Community living, supported, *see Community Living, Supported above*
Complaints **441**—24.7
Coordination **441**—22.4(3)
Denial/reduction/termination **441**—153.57
Eligibility **441**—153.52–153.56, 153.58
Evaluation **441**—24.4(12)*b*, 24.4(16)
Payment, *see Funds above*
Plan **441**—24.1, 24.4(3), 24.4(9)*b*, 24.4(12)
Rehabilitation **441**—22.4(2), 22.4(3)*a*(6), 22.4(6)*b*, 24.1, 24.6(1)
Standards, *generally* **441**—ch 22, 24.2–24.4
Transportation/personal care/support **441**—22.4(4)
Vocational **441**—22.4(6)

Residential care facilities **441**—77.37(15)*a*(3), 77.37(23), 78.27(4)*a*(8), 79.1(2)p.5, ch 116; **481**—40.1, ch 54, 57.4, ch 63
Resource centers
Admissions **441**—30.2, 30.3
Areas, catchment **441**—30.1
Confidential information **61**—2.14(12); **441**—28.12, 30.5(2)*b*
Donations **441**—28.9
Facilities, public use **441**—ch 2, 28.7
Regents board authority **681**—12.1(3)
Residents
Discharge, funds, eligibility **441**—153.53
Interviews, media **441**—28.6
Photographing/recording **441**—28.5
Rights **441**—30.5
Support/liability, legal settlement **441**—28.12(2), 30.3, 30.4

Tours **441**—28.8
Treatment **441**—30.5(2)
Visitors **441**—30.5(4)*b*, 30.6

Respite care, *see Home- and Community-Based Services (HCBS MR) Providers above*
Special education **281**—ch 41; **282**—ch 15; **441**—ch 184 Div. I, *see also EDUCATION*

MENTORS
Administrators, school **281**—83.9, 98.43
Advisory board **877**—ch 13
School to career program **261**—11.3(4)
Strategic workforce development program **877**—15.7(3)
Teachers
Beginning, induction program **281**—83.3, 98.42
Intern program **281**—77.8(2)*b,f*; **282**—13.9(5), *see also TEACHERS*

Workforce investment program **877**—7.14(14)

MERCHANT MARINES
See WATER: Waterways

MERCURY
See METALS

MERGED AREA SCHOOLS
See COLLEGES AND UNIVERSITIES: Community

MERIT EMPLOYMENT SYSTEM
See PERSONNEL DEPARTMENT

METALS
Aluminum production, emissions **567**—23.1(4)*al*, *br*
Heavy, *see POISONS*
Lead, *see LEAD*
Mercury
Auto switches **567**—ch 215
Emissions **567**—22.3(5), 23.1(3)*d*, 23.1(4)*di*, 23.1(5)*b*(3) Tables 1, 2, 25.3, 34.300–34.308
Waste, *see ENVIRONMENTAL PROTECTION COMMISSION: Hazardous Waste*

Minerals, metallic **565**—ch 51
Surface coating, emissions **567**—23.1(4)*ci*,*ck*,*cm*,*cn*,*cr*,*cs*

METERS
See ELECTRIC UTILITIES; GAS UTILITIES; WATER UTILITIES

METHANE
See GAS

MEWA (MULTIPLE EMPLOYER WELFARE ARRANGEMENTS)
Generally **191**—ch 77

MIDWIVES
See NURSES

MIGRANT WORKERS
Child care **441**—170.1, 170.2(1)*c*(2)
Contractors **877**—8.3
Labor camps **641**—ch 81
Permits
Definition **875**—32.1
Youth **875**—32.2; **877**—8.6(4)

MILITARY
See also NATIONAL GUARD; VETERANS
Burial **801**—1.7, 6.12(2)
Child support **441**—41.22(5)
Driver's licenses **761**—604.21(2)*c*, 604.31(2)*d*, 605.16
Ex-service members, job placement **877**—8.2(4,12,13)
Hunting
Fees, refund **571**—15.8(3)
Transportation tags **571**—15.25

Insurance **191**—ch 25, 36.6(1)*e*
Leaves, employment **11**—50.1, 53.7(1)*b*, 53.7(2)*a*, 53.7(5)*c*, 60.1(1)*d*, 63.2(2)*n*, 63.4(1)*f*, 63.6, 63.9
Offenders, forms for process **611**—ch 1
Professionals in service, continuing education exemption, *see specific profession subheading Continuing Education*

Public defense, *see PUBLIC DEFENSE DEPARTMENT*
Retirement, benefits **495**—7.1(3), 7.2(3), 8.1(5)
Taxation
Income **701**—38.17(3), 39.11, 39.12, 39.14, 40.5, 40.22(4), 40.35, 40.40, 40.51, 40.58, 40.61–40.64, 40.68, 40.72, 42.1
Organizations/posts, exemption **701**—52.1(6)*e*
Property, credit/exemption **701**—80.1(1)*e*, 80.1(2)*j*, 80.1(3), 80.1(4)*e*, 80.2
Relief agencies **701**—17.5

Unemployment compensation **871**—23.3(2)*c*, 24.1(113)*d*, 24.13(4)*h*, 24.25(8), 24.26(25)
Vehicle registration **761**—400.32, 400.43, 400.44(6)
Voting **721**—21.1(14), 21.320, 23.2

MILK
See DAIRIES

MINES AND MINING
Abandoned, land reclamation **21**—1.4(3); **27**—ch 50
Child labor **875**—32.8(8)
Coal **27**—ch 40, *see also COAL*
Explosives, sales **701**—16.5
Minerals
Bonds **27**—60.40, 60.41, 60.95
Bureau, mining **21**—1.4(3); **27**—60.10
Definitions **27**—60.12
Excavation/reclamation **27**—60.75, 60.80
License **27**—60.20, 60.80(7), 60.95
Political subdivisions **27**—60.100
Registration **27**—60.30, 60.31, 60.40, 60.50, 60.60, 60.95
Reports **27**—60.70, 60.80, 60.95
Transfers, operators **27**—60.50
Variance, application/approval **27**—60.80(8), 60.85
Violations/penalties **27**—60.65, 60.90
Wireline service operations/subsurface tracer studies **641**—45.6

Pollution emergency **567**—26.4 Table V
Standards, effluent/pretreatment **567**—62.4(36,40)
Taxation, manufacturer defined **701**—18.58(1)

MINISTERS
See RELIGION

MINORITIES
See also CIVIL RIGHTS; DISCRIMINATION: Contracts, State Agencies; WOMEN
African-Americans, division on status **434**—chs 1–6
Businesses, small/minority/women
Procurement policies **541**—ch 10; **567**—92.8(2)*b*, *see also DISCRIMINATION: Contracts, State Agencies*
Targeted, *see SMALL BUSINESS*

Grants
Advancement/education **281**—ch 94; **283**—ch 22
Microentrepreneurs **261**—ch 113

Health, multicultural, state office **641**—ch 82
Schools
Administrative advancement **281**—ch 94
Tuition grant program **283**—ch 22

MINORS
See CHILDREN; JUVENILES

MISSING PERSONS
See CRIME

MOBILE HOMES
See also HOMES, HOUSING: Manufactured; MOTOR VEHICLES: Motor Homes
Abandoned, disposal **761**—480.3(5)*b*
Assessment **701**—74.5
Building code, *see BUILDINGS: Building Code: Manufactured Housing*
Certificate of title **761**—400.4(5), 400.5(2)*a*, 400.6, 400.7(4,9), 400.40, 421.1, 421.6
Construction contractors **871**—23.82(2)*n*(6), *see also Building Code above*
Conversion, vehicle titles **761**—400.40
Definitions **661**—16.620(4), 372.1; **701**—74.1
Inspections **661**—372.7
Manufacturers/distributors **283**—37.1; **441**—ch 98 Div. VIII; **661**—16.620, 372.1, 372.5, 372.7, 372.8; **701**—ch 153
Parks
  Manager, reports **701**—74.6
  Storm shelters **701**—80.14
  Swimming pools **641**—15.4(4)*d*(1), 15.5(21)*a*
Permits, moving **761**—ch 511
Real estate **701**—19.10(2)*f*, 73.11, 74.5, 80.1(2)*f*, 80.2(2)*j*; **761**—400.40
Registration, *see Certificate of Title above*
Rental **701**—18.40, 26.18(2)*c*
Retailers
  Address/name change **661**—372.4
  Advertising **661**—372.3
  Definitions **661**—372.1
  Inspections **661**—372.7
  Installations, certificate **661**—16.622(1)*a*
  License **661**—372.2, 372.3, 372.5
  Sale/transfer **661**—372.6
  Services/sales, taxation **701**—32.3, 33.9
Sales, *see Retailers above*
Taxation **701**—18.40, 19.6(1), 19.6(2)*b*, 19.6(3)*d*, 19.10(2)*f*, 19.13(2)*l*, 26.18(2)*c*, 32.3, 33.9, 73.11, ch 74, 80.1(2)*f*, 80.2(2)*j*, 219.11(2)*f*, *see also Parks: Storm Shelters above*
Towing/escorting **761**—511.14, 511.15

MODULAR HOMES
See HOMES, HOUSING: Taxation

MONUMENTS
Construction **193C**—11.7
Sales, cemetery, *see FUNERALS: Prearrangement*

MORTALITY TABLES
Inheritance tax **701**—86.7
Insurance **191**—chs 42–44

MORTGAGES
See also LOANS
Bankers/brokers
  Advertising **187**—18.16(9)*g*, 18.18
  Bonds, filing **187**—18.2(5)
  Complaints/violations **187**—18.9(2), 18.19, 18.20, *see also Discipline this subheading below*

Definitions **187**—18.1
Discipline **187**—18.7, 18.8(6), 18.19(3)*b*, 18.20
Fees **187**—18.2(2), 18.8(3), 18.9, 18.17
License **187**—18.1–18.3, 18.7(3,5), 18.9(3,5), 18.20(2)*c*, 18.20(3); **283**—ch 37; **441**—ch 98 Div. VIII; **701**—ch 153
Notifications **187**—18.7, 18.8
Records **187**—18.16, 18.19(1), 18.20(2)*l*
Reports/filings **187**—18.9(4), 18.16(9)*f*, 18.17

Credit certificates (MCC) **265**—ch 10
Disasters, bond allocation **265**—30.3(3)
Taxation, deduction **701**—41.12, 86.6(1)*b–d*

MORTICIAN
See FUNERALS

MORTUARY SCIENCE BOARD
See FUNERALS

MOTELS
See HOTELS AND MOTELS; TAXATION: Hotel/Motel

MOTORCYCLES
See MOTOR VEHICLES

MOTOR HOMES
See MOTOR VEHICLES

MOTOR VEHICLES
See also AIRCRAFT; BOATS AND BOATING; CARRIERS; MOBILE HOMES; PARKING; TRANSPORTATION DEPARTMENT
Abandoned **661**—ch 6; **761**—ch 480
Accidents
Claims, tort **543**—1.4(4)
Deaths/vehicular homicide **641**—127.3(1)*g*, 127.3(2)*b*,*e*; **761**—615.19
Driver improvement actions **11**—103.12; **761**—615.42
Employees, state business **11**—103.5, 103.7, 103.12
Financial responsibility **761**—ch 640
Game, salvage **571**—80.2
Highway damages **761**—ch 40
Intoxicated driver, victim compensation **61**—9.31(3)
License suspension **11**—103.12; **761**—615.12, 615.17, 615.19, 615.21
Reports **11**—103.7; **571**—50.1; **641**—132.8(6); **761**—604.50, 640.3
Safety program **661**—ch 20
Towing **761**—ch 454

All-terrain **571**—12.23(1)*c*(1), 12.23(2)*a*, 12.31, 15.43, chs 28, 44, 46, 50, 67.8(2); **641**—127.3(2)*e*; **701**—213.22; **761**—400.21(4)
Ambulances/emergency response **641**—132.1, 132.7(1), 132.8(1)*b*, 132.8(4–6), chs 133, 144; **701**—34.5(10); **761**—425.70(2)*g*, ch 451, *see also EMERGENCY MEDICAL CARE*
Bicycles, motorized **701**—26.11, 26.31; **761**—400.58, 450.4(16), ch 636, *see also Licenses below*
Buses **281**—ch 44; **567**—107.8(1); **761**—400.2(8), 400.5(2)*c*,*f*, 400.42, ch 911, *see also BUSES; CARRIERS*
Carriers, *see BUSES; CARRIERS*
Child labor, vehicle operators/helpers **875**—32.8(2)
Classic, exhibition **761**—425.29
Commercial, *see CARRIERS*

Constructed/reconstructed, *see Registration below*
Converted, *see Rebuilt below; Trucks below; MOBILE HOMES*
Corporations, mergers **701**—34.13
Dealers/manufacturers/distributors **61**—ch 30; **571**—50.10, 50.11; **701**—17.6, 34.1(2), 34.7, 34.8, 34.11, 34.15–34.17, 34.21; **761**—400.1, 400.3(11), 400.4, 400.27, 405.2, 405.3, 405.6, 405.8(3), 424.1, chs 425, 430, 431, *see also Equipment below*
Definitions **11**—105.2; **571**—44.1; **701**—26.55; **761**—400.1, 400.16(1), 401.1, 405.2, 405.8(1), 415.3, 424.1(2), 425.3, 425.26(1), 425.70(1), 430.1(2), 431.1, 450.2(1), 480.1, 600.1, 604.2, 607.3, 611.3, 615.1, 615.12, 635.1, 636.2, 640.1, 641.2, *see also CARRIERS*
Dimensions, *see CARRIERS*
Disabled persons
  Game management areas **571**—51.8(2)
  License, restrictions **761**—600.4, 601.1(4), 602.26(3)*a*(4)
  Permits **571**—51.8(2)*b*, 61.2, 61.4(5)*k*, 61.7(8,12), 66.4; **681**—4.30(4); **761**—ch 411, 602.21(1)*a*
  Registration, *see Registration below*
  School bus requirements **281**—44.5
  Seat belts **761**—600.16
  Vehicle modification **441**—77.37(17), 78.41(4), 79.1(2)p.6, 79.1(17), 83.66
  Windshield placard **761**—411.3
Dispatcher, state agencies, *see State Agencies below*
Display/exhibition **761**—425.12(3), 425.14(2), 425.26, 425.29–425.31, 425.62(2)
Division **761**—1.8(5)
Driver education
  Courses
    Alcohol rehabilitation **281**—5.14(14), 21.30–21.33; **641**—157.3(4); **761**—620.16
    Minors **761**—602.25(2), 602.26
    Motorcycle rider **761**—602.2(1), 602.13(2), 602.25(2)*e*, 602.26(2), ch 635
    Motorized bicycles **761**—602.2(1), 602.24(2), ch 636
    Noncommercial **761**—602.11(2)*b*
  Forms **761**—602.2
  Improvement programs/interviews **11**—103.8, 103.12; **761**—615.42–615.44
  Records **281**—5.14(2,14)
  Schools **761**—634.8, ch 636
  Teachers **282**—12.1"17," 12.2"14," 13.28(4), ch 23; **761**—634.6–634.8, 635.3, 635.5(2–4), 635.7, 636.5(1), 636.8
Driver's Privacy Protection Act **761**—ch 415, 610.2, 610.3(2), 610.4(3,5), 611.2–611.4
Drunk driving, *see OWI (Operating While Intoxicated) below*
Emergency
  Certification **761**—ch 451
  Firefighting/rescue show permits **761**—425.31
  Permits **761**—ch 451
  Registration **761**—400.2(8), 400.5(2)*d*,*e*
Emissions
  Permit exemption **567**—22.1(2)*nn*
  Violations **567**—20.3(5), 23.3(2)*d*
Equipment
  Buses, *see BUSES*
  Definitions **761**—450.2(1)
  Machinery, agriculture **761**—450.6
  Mobile, special **761**—ch 410
  Motorcycles **761**—450.4

Multipurpose vehicles **761**—400.35
Restrictions **761**—400.21(3)
Safety **761**—ch 450
Seat belts **761**—600.16
Slow-moving **761**—ch 452
Specially constructed/reconstructed **761**—450.2, 450.4
Switches, mercury removal **567**—ch 215
Tires **761**—450.2(20), 450.3, 450.4(7), 450.6(2)*e*
Windows/sidewings **761**—450.7

Forfeited **61**—33.2(1), 33.4(6)
Fuel, *see State Agencies below; FUEL*
Game management areas **571**—51.8
Garbage trucks, *see Recyclers, Vehicle below; Rubbish below*
Government, sales **761**—425.20(4)
Hearings/appeals **761**—ch 13, 400.56, 411.7, 425.62(4), 607.39(3), 615.22(3)*c*, 615.38, 620.3(5), 620.4, 640.2
Highway emergency long-distance phone (HELP) **661**—1.2(2)
Identification
Numbers **761**—400.4(1)*c*, 400.13(1)*d*, 400.16(1)*b*, 400.16(2)*c*(1), 400.51; **821**—2.8(3,4), 2.14(3), 2.15, 3.10, 8.2"2," 11.7
Stickers, special fuel **761**—400.53(2)

Ignition interlock devices (IIDs) **661**—ch 158; **761**—620.3(3)*c*, 620.5(7)
Impoundment **11**—101.11(5–9); **661**—ch 6; **761**—480.3(2,3)
Information **761**—400.6, ch 415, 620.2, 630.1(2), 640.1(3), *see also Licenses: Driver's subheadings Forms/Information; Records/Reports below; Registration: Records below*
Inspections **761**—425.60
Insurance **11**—4.14(6)*c*, 103.3(3); **191**—15.10, 15.43, 15.45, ch 23; **571**—28.13(6); **701**—34.21; **761**—405.6(2), 405.7(2), 635.4, 635.5(5)*c*(5), chs 640, 641, *see also Licenses: Driver's: Responsibilities, Financial below; CARRIERS*
Junked, certificates, *see Registration below*
Junkyards **761**—ch 116
Leases **281**—41.412(5); **701**—18.36(3), 26.68(2), 31.4, 31.5, 32.9, 32.11, 33.7, 34.5(8,12), 34.9, 34.10, 52.1(2)*a*(2); **761**—400.2(6), 400.3(14), 400.5(2)*b*, 400.60(4), 425.17(3,4), ch 430, *see also CARRIERS*
Lemon law/buy-back **61**—ch 30; **701**—28.1, 34.3; **761**—405.9(1), 405.10(1)*e*
Licenses
See also Permits below
Address
See also Driver's this subheading below
Change, dealers **761**—425.18, 425.50(2)*d*(1)
Driver's services office **761**—600.2

Dealers **701**—34.21; **761**—ch 425
Distributors, *see Manufacturers/Distributors/Wholesalers this subheading below*
Driver's
See also Driver Education: Teachers above
Address change, notification **761**—605.12
Application **761**—600.2, ch 601, 602.2, 607.15
Bicycles, motorized **761**—602.11(1)*a*(2), 602.12(1)*a*(2), 602.13(1)*a*(2), 602.24, 602.25(1)*c*, 602.26(1)*d*, 604.31(1)*e*, 605.5(4), 605.20(2), 615.7(2), *see also Driver Education above*
Cancellation/denial **283**—37.1; **441**—ch 98 Div. VIII; **701**—7.8(3), ch 153; **761**—400.56, 600.4(8), 604.13(2,3), 604.40, 604.45, 605.16(4), 607.40, 615.1, 615.4, 615.7, 615.37–615.39, 615.45(6), 620.3(5), 625.5, 630.2(5)
Chauffeur **761**—602.12, 604.21(1)*c*, 605.4(2), 607.16(2)*h*
Child support noncompliance **761**—600.4(8), 615.24(1), 615.45(1)*k*

MOTOR VEHICLES (cont'd)
Licenses
Driver's

Classes **761**—ch 602, 604.31, 605.3, 605.4, 607.16, 607.18
Commercial **761**—602.1(1,3), 605.3, 605.4(1), 605.5(1,3), ch 607
Corrections facility documents **761**—601.5(2)*a*(7)
Debts, state, nonpayment **761**—615.24(3)
Duplicate **761**—601.5, 605.10, 605.11
Eligibility **761**—600.3, 600.4, 607.16(3), 615.45(1), 620.3(1)
Employees, state vehicle operation **11**—103.6
Endorsements **761**—605.4, 607.17, 635.2(9), 635.3(2)*a*, 635.5(2)*a*(1)
Examinations **761**—ch 604, 607.2(2), 607.10, 607.25–607.28, 607.31, 620.5(4)
Extensions **761**—602.13(1)*c*, 604.31(2)*d*, 605.15, 605.16
Fees **761**—605.9–605.11, 605.20, 607.49(6)*e,g*, 615.40(5,6), 615.45(5)*a*, 620.5(2,5,6), 625.3(2)
Forms /information **761**—600.2, 601.5(3), 602.2, 602.26(2,3), 604.3(1), 607.2, 615.3, 615.22(2), 620.3(1)*b*, 620.4(1), ch 640
Handicapped, *see Disabled above*
Hearings/appeals **761**—ch 13, 400.56, 604.40(2), 607.39(3), 615.22(3)*c*, 615.38, 620.3(5), 620.4, 640.2
Identification, nonoperator **761**—601.2, 601.5, chs 610, 611, 630
Impairments, driver **761**—600.4(4), 601.1(4), 604.13, 605.5(5)
Instructors **761**—635.3, 636.8
Law enforcement officers, undercover **761**—ch 625
Liability, *see Responsibilities, Financial this subheading below*
Military personnel **761**—604.21(2)*c*, 604.31(2)*d*, 605.16
Minors **761**—601.5(2)*b*(21), 601.6, 602.1(2), 602.2(2), 602.11(2), 602.25, 602.26, 604.31(2)*a*(2), 605.5(4), 605.20(2), 615.7, 615.21, 615.23, 615.33; **875**—32.8(2)
Motorcycles **761**—602.11(1)*a*(3), 602.12(1)*a*(3), 602.13, 602.25(2)*e*, 602.26(1)*d*, 602.26(2)*d*, 604.21(1)*b*, 604.31(1)*d*, 604.31(2)*a,g*, 605.3, 605.4(3), 605.20(1)*b,c*, 607.16(2)*d*, 635.3, *see also Driver Education above*
Noncommercial **761**—602.1(1), 602.11–602.13, 602.19, 602.21, 602.24–602.26, 604.31, 605.5(2)
Offenders, habitual **761**—615.9
Records/reports **11**—103.11; **761**—415.1(2), 415.3, 607.7, chs 610, 611, 625.6, 640.3
Reinstatement **11**—103.14; **761**—604.45, 605.16(4), 607.45, 615.40, 620.5
Renewal **283**—37.1; **441**—ch 98 Div. VIII; **701**—ch 153; **761**—602.21(1)*a*, 604.31(2)*b*, 605.10, 605.16(3), 605.25, 607.37, 625.4
Replacement, *see Duplicate this subheading above*
Responsibilities, financial **761**—605.5(5)*d*, 615.40(1), 620.3(3), 620.5(1), chs 640, 641
Restrictions **761**—600.4, ch 602, 604.11, 604.13, 605.5, 607.18, 607.49, 615.23(2)*e*, 615.44(2)*c*, *see also Temporary this subheading below*
Special **761**—602.1(2), 605.5(4)
Student loan noncompliance **761**—600.4(9), 615.24(2), 615.45(1)*l*
Suspension/revocation **11**—103.12–103.14; **441**—ch 98 Div. VIII; **701**—ch 153; **761**—400.27(4)*d*, 400.56, 600.4(7), 604.13(3), 604.40, 604.45, 607.40, 610.3(1)*b*, chs 615, 620, 630.2(5), 635.3(3), 640.4–640.6, *see also Cancellation/Denial this subheading above*
Temporary **11**—103.15; **761**—605.5(1), 607.20(2)*b*, 615.23(1)*b*, 615.45, 620.3, 620.6
Tests, *see Examinations this subheading above*
Waivers **761**—602.2(3), 605.10

Leasing **761**—ch 430
Manufacturers/distributors/wholesalers **761**—425.50, 425.53
Milk tankers/trucks **21**—68.2(6), 68.41, 68.71
Recyclers **761**—ch 431
Rental companies/employees **191**—ch 10 Div. II
Wholesalers, *see Wholesalers below*

Lights **641**—ch 133; **761**—450.2(21), 450.4(16), ch 452, 511.15
Loans, guarantee automobile/asset protection (GAP) **189**—5.12
Machinery, movement **761**—511.11, 511.12

Manufacturers, *see Dealers/Manufacturers/Distributors above*
Motorcycles **571**—ch 44; **681**—4.5(6), 4.29(8); **701**—26.11, 26.31; **761**—400.37, 425.12(4)*e*(1), 450.4, 602.1(2), 602.18, 604.21(1)*b*, 604.31(1)*d*, 605.5(4), 605.20(2), ch 635, *see also Licenses above; Registration below*
Motor homes **761**—400.7(4)*e*, 425.12(3)*a*, 425.50(2)*b*
Nonoperators, identification cards **761**—ch 630
Odometer statements **761**—400.52
Operation, pollution emergency **567**—26.4 Tables III–V
OWI (operating while intoxicated) **11**—103.12(2)*c*, 103.12(6,7); **201**—ch 47; **281**—21.30–21.33; **641**—ch 157; **761**—ch 620
Ownership transfers, *see Registration: Transfers below*
Parks/recreation areas **571**—61.2, 61.4(5)*j*, 61.7(8,12), 61.8(2)*a*, 66.4, 67.8(2)
Parts, dealers **761**—431.2(3), *see also Repair/Service above*
Permits
See also CARRIERS
Chauffeur **761**—602.1(2), 602.23, 604.21(1)*c*, 605.5(4), 605.20(2)
Classic car, dealers **761**—425.29
Demonstration **761**—425.62(3), 425.72
Denial/suspension/revocation **283**—37.1; **441**—ch 98 Div. VIII; **701**—ch 153; **761**—425.62
Disabled, *see Disabled above*
Display **681**—4.29(8), 4.30(5); **761**—425.26(2), 425.30
Emergency equipment/rescue vehicles **761**—425.31, ch 451
Exhibitions/fairs **761**—425.26, 425.29, 425.31, 425.62(2)
Fuel, interstate, *see CARRIERS*
Instruction **761**—602.1(2), 602.18, 602.19, 602.21, 602.23, 604.21(1)*b*,*c*, 604.31(1)*a*, 605.5(4), 605.20(2), 607.20, 615.42
Load
See also Weight below
Demonstration, truck capabilities **761**—425.72
Oversize/excessive **761**—150.3(5), 410.2(3), ch 511
Rubbish hauling **761**—ch 513
Sales **761**—425.26(2)*b*
Special **761**—602.1(2)
Tax, *see Taxation below*
Temporary **681**—4.30(5); **761**—630.1(1), *see also Licenses: Driver's above*
Work, *see Licenses: Driver's: Temporary above*
Plates, *see Registration below*
Point system, habitual offenders **761**—615.9
Rebuilt **61**—ch 27; **761**—405.6, 405.8, 405.9(1), 405.10(1), 431.2(2)
Records, s*ee Licenses: Driver's above; Registration below*
Recyclers, vehicle **567**—ch 215; **701**—34.5(11); **761**—405.3(3), 405.8(3), ch 424, 425.12(5), ch 431
Refrigerants **661**—226.3
Registration
See also CARRIERS; IOWA STATE UNIVERSITY (AMES); UNIVERSITY OF IOWA (IOWA CITY); UNIVERSITY OF NORTHERN IOWA (CEDAR FALLS)
Generally **761**—ch 400
Addresses, county/state offices **761**—400.5, 400.6
Antique **761**—400.13(3), 400.23(2)*c*
Bonds **571**—ch 46; **761**—400.4(3)*g*, 400.13, 400.23(2)*c*
Buses **761**—400.2(8), 400.5(2)*c*,*f*, 400.42
Certificate of title **11**—111.3(17); **61**—33.4(6); **701**—34.7; **761**—chs 400, 405, 415, 425.20(2), 450.2(2), 640.4(6)*b*, 640.7

Credit **761**—400.60, 400.61(2,4)
Definitions **701**—34.1; **761**—400.1, 401.1
Delinquent **761**—400.44
Designations, title **761**—400.7(10), 405.8–405.10, *see also Salvage below*
Disabilities
All-terrain **761**—400.21(4)
Multipurpose **761**—400.35
Plates, *see Plates: Special this subheading below*
Exemptions **701**—17.6; **761**—400.2, 410.1(2)
Fees **701**—41.5(7,9), 53.18; **761**—400.1, 400.2(3), 400.22, 400.24, 400.25, 400.27(4,5), 400.35, 400.45(2), 400.46, 400.50, 400.60, 401.2(3,4), 401.13(3), 401.33, 401.36, 405.3(4)
Foreign **701**—34.7; **761**—400.3(9), 400.4(3,7,8), 400.7(5), 400.22(2)*d*, 400.27(4), 400.30, 405.8, 405.10(1)*e*(2)
Identification, *see Identification above; Plates: Stickers this subheading below*
Interstate, *see CARRIERS*
Junked
See also Salvage below
Certificate **761**—400.13(3), 400.23, 400.50(1)*d*, 405.8(8), 405.9(3)
Fees, credit/refund **761**—400.50(1)*e*, 400.60(1)*b*,*d*
Military **761**—400.32, 400.43, 400.44(6), *see also Plates: Special this subheading below*
Mobile homes, *see MOBILE HOMES*
Motorcycles **681**—4.4, 4.28, 4.68; **761**—400.37, 400.53(1)
Motor homes **761**—400.7(4)
Multipurpose **701**—41.5(7); **761**—400.35
Name change **761**—400.7(11), *see also Transfers this subheading below*
Nonresident **761**—400.5(1), 400.30, 400.32
Plates
Application **761**—400.3(4)
Dealer **761**—421.5, 425.70
Display **761**—400.19
Disposal **761**—400.63
Issuance, sequential **761**—400.63
Lessor, assignments **761**—400.60(4)
"Limited use" designation **761**—425.70(2)*d–g*
Mobile equipment, special **761**—ch 410
Motorized bicycles/motorcycles **761**—400.58(2), 401.6(2), 401.7(2)
Reassignment **761**—400.61, 401.34
Removal, peace officers **761**—400.70
Revocation/suspension/denial **761**—400.45, 400.46, 401.35
Salvage **761**—405.3(5)
Special
Generally **761**—ch 401
Amateur radio **761**—401.5
Collegiate **761**—401.4, 401.7
Disabled **761**—401.13, 401.20, *see also Stickers this subheading below*
Emblems, processed, *generally* **761**—401.15–401.17
Emergency medical services (EMS) **761**—401.10
Ex-prisoner of war **761**—401.21
Firefighter **661**—259.104; **761**—401.9
Legion of Merit **761**—401.19
Medal of Honor **761**—401.8
National guard **761**—401.22

MOTOR VEHICLES (cont'd)
Registration
Plates
Special
Natural resources **761**—400.53(1), 401.11
Pearl Harbor **761**—401.23
Personalized **761**—401.2(3)*b*, 401.4, 401.6, 401.7(2), 401.11
Purple Heart **761**—401.24
Revocation **761**—401.35
Silver/Bronze Star **761**—401.24
State agency-sponsored processed emblem **761**—401.17
Transfers, *see Reassignment this subheading above*
U.S. armed forces, retired **761**—401.25
Veterans **761**—401.8, 401.13, 401.19, 401.21, 401.23–401.25, 401.31, 411.4
Stickers **761**—400.53, 411.3(2), 411.4
Storage **761**—400.43, 400.50(1)*c*, 400.62
Surrender **761**—401.32
Temporary usage **761**—400.19
Transporter **761**—ch 424
Proportional **761**—400.5(3,4), 400.60(3)
Reconstructed **761**—400.39, *see also Special Construction/Reconstruction this subheading below*
Records
Privacy **761**—ch 415
Title check **761**—405.8(5), 405.9
Reissuance **761**—400.59
Renewal, denial **701**—7.8(3)
Restrictions **761**—400.21, *see also Licenses: Driver's above*
Security interest **761**—400.4(1)*b*, 400.10, 400.11
Snowmobiles/all-terrain vehicles **571**—chs 28, 50
Special construction/reconstruction **761**—400.16
Suspension/revocation/denial **441**—ch 98 Div. VIII; **701**—7.8(3), ch 153; **761**—400.45, 400.46, 400.56, 401.35, 640.4–640.7, *see also Licenses: Driver's above*
Taxation **701**—ch 34, 41.5(7,9), 53.18, 59.19
Titles, *see Certificate of Title this subheading above*
Transfers **761**—400.14, 400.19, 400.22, 400.27(5), 400.32(3), 400.60(2), 400.61, 640.4(6), 640.7, *see also Plates: Reassignment this subheading above*
Trucks **761**—400.5(2)*d*, 400.20, 400.28, 400.39
Vans, *see Multipurpose this subheading above*
Veterans
See also Plates: Special this subheading above
Parking stickers **761**—411.4
Rental **191**—10.51–10.60; **701**—34.5(12); **761**—425.70(3)*a*, *see also Taxation below*
Repair/service
Facilities **761**—425.12(4), 425.14(3)
Parts, aftermarket crash, payment **191**—15.45
Records **61**—ch 29
Taxation, *see Taxation below*
Rubbish hauling **761**—ch 513
Sales
See also Dealers/Manufacturers/Distributors above; Registration: Transfers above; Taxation below
Abandoned vehicles **761**—480.3(3–5)
Fleets/retail auctions **761**—425.20(1,2)
Personnel, authorization **761**—425.40
Salvage, *see Salvage below*
State property **11**—ch 111

Salvage
See also Recyclers, Vehicle above
Definitions **761**—405.2, 405.8(1)
Designations **761**—405.8(5), 405.9, 405.10
Examiners, law enforcement certification **501**—ch 11
Facilities/equipment **761**—431.2(4)
Foreign vehicles **761**—405.8, 405.10
Sales, misrepresentation **61**—ch 27
Theft examination **761**—405.3(1), 405.7(1)*a*(2), 405.15
Title **761**—400.27(3)*f*, 405.3, 405.6–405.10

Search/seizure **661**—6.6
Seat belts/restraints **761**—600.16, 911.7(2)
Service contracts **191**—ch 23; **701**—14.3(6)
Size, excessive **761**—ch 511
Snowmobiles, *see SNOWMOBILES*
Standards
Equipment **761**—ch 450
Motor homes **761**—425.50(2)*b*

State agencies
Assignment **11**—103.1, 103.3, 103.4
Driver guidelines **11**—103.2, 103.3(3), 103.5–103.15
Fuel **11**—103.16, 105.11(6,7)
Management, fleet/mail/print division duties **11**—1.4(1)*c*, 103.11

Storage **11**—111.3(16); **571**—38.12, *see also Registration: Plates above*
Streams, operation prohibited **571**—ch 49
Tank
Bulk milk **21**—68.41–68.47
License, endorsements **761**—607.17(3,5)

Taxation
Deductions, registration fees **701**—41.5(7,9), 53.18, 59.19
Excise
Rentals **701**—ch 27, *see also Sales/Use this subheading below*
Sales **701**—34.18

Fuel, *see TAXATION: Motor Fuel*
Heavy vehicle **761**—400.20
Sales/use
Armored car services **701**—26.4
Casual sale **701**—18.28(1)
Collections **701**—17.6, 34.2, 34.4, 34.5, 34.15
Corporations, transfers **701**—34.13
Dealers **701**—34.1, 34.7, 34.8, 34.17, *see also SNOWMOBILES*
Exemptions **701**—17.6, 28.1, 31.4, 32.4, 32.9–32.12, 33.5–33.7, 34.5, 34.8–34.10, 34.15, 34.17, 34.19–34.21
Fluids **701**—18.46
Gifts **701**—34.6
Leases **701**—18.36(3), 26.68(2), 31.4, 31.5, 32.9, 33.7, 34.5(8,12), 34.9, 34.10
Local option **701**—107.6
Nonregistered vehicles **701**—213.22
Parts **701**—18.31(2), 18.36(3)*b*
Permits **701**—17.6

MOTOR VEHICLES (cont'd)
Taxation
Sales/use

Rate **701**—14.3(6,10)
Rebates **701**—34.16
Refunds **701**—34.3, 34.11, 34.14
Rental **701**—18.43, 26.68, 32.11, 32.12, 33.8, 34.5(12), 34.10
Services/repairs **701**—14.3(6), 18.31(2), 26.5, 26.11, 26.30–26.32
Trade-ins **701**—15.19
Veterans **701**—34.12
Wash/wax **701**—26.11

Tires, *see Equipment above*
Titles, *see Registration: Certificate of Title above*
Towing
Agricultural equipment **761**—450.6
Impoundment **661**—6.4; **761**—480.3(3)*a*, 480.4(2)
Insurance **191**—15.43(8)
Truck, license endorsements **761**—607.17(7)
Weight **761**—607.51
Wrecked/disabled vehicles **761**—ch 454

Trailers, *see TRAILERS*
Trails **571**—66.4, 67.5
Transporters, plates **761**—ch 424
Treasurer, county, report **761**—400.63
Trucks
See also Weight below; CARRIERS
Converted **761**—400.37, 400.39
Display **761**—425.12(3), 425.30
Emissions **567**—22.1(2)*nn*
Fire **701**—34.5(10); **761**—400.5(2)*d*, 425.31
Milk **21**—68.2(6), 68.37, 68.71, *see also Tank above*
Mobile equipment, special **761**—ch 410
Permits **761**—425.30, 425.31, 425.72
Registration, *see Registration above*
Tow, *see Towing above*

Veterans, *see Registration: Plates: Special above; Taxation: Sales/Use above*
Violations **761**—400.27(6), 411.7, 511.16, ch 615, *see also Emissions above; Licenses: Suspension/Revocation above*
Warning devices **761**—450.6(2)*f*, ch 452, 511.15(3)
Warranty, *see Lemon Law/Buy-Back above*
Weight **761**—ch 181, 400.3(12), 400.20, 400.47, 405.1, 405.3(1), 405.7(1)*a*(2), 410.2, 500.1, ch 511, 513.2(3), 604.35, 607.51
Wholesalers **701**—34.5(10); **761**—425.3, 425.50, 425.53, 425.70(2)*h*, 425.70(3)*e*
Windows, *see Equipment above*

MOVING WALKS
Permits **875**—71.16(2)*c*, 71.16(3)*d*
Standards **875**—72.9

MULES
See LIVESTOCK

MUSEUMS
See CULTURAL AFFAIRS DEPARTMENT; HISTORICAL DIVISION

MUSHROOMS
Gathering, natural resource jurisdiction **571**—54.1
Horticultural bureau, producer's assistance **21**—1.2(8)*a*
Morel, food establishments/farmer's markets **481**—31.1(12)

MUSSELS
Commercial harvest **571**—ch 87
Endangered species **571**—77.2
Invasive, aquatic **571**—90.2(3)

NAIL TECHNOLOGISTS
See COSMETOLOGY AND COSMETOLOGISTS

NAMES
See also TRADEMARKS/TRADE NAMES
Birth certificates **641**—99.6, 100.6, 102.7–102.10
Brand/product names **21**—41.1–41.3, 42.2, 42.3, 42.5, 43.3, 43.30, 45.8, 45.11, 45.12
Change, individual **641**—102.7–102.10, *see also specific profession subheading Address/Name Change*
Corporations, document filing **721**—ch 40
Employment agencies **875**—38.2
Ingredients
  Pesticides **21**—45.7, 45.13
  Pet food **21**—42.2(13), 42.3

NARCOTICS
See DRUGS; PUBLIC SAFETY DEPARTMENT; SUBSTANCE ABUSE

NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON
See VOLUNTEER SERVICE, IOWA COMMISSION ON

NATIONAL GUARD
See also VETERANS
Education, assistance program **283**—ch 20
Emergency preparedness advisory committee **641**—114.4(1)*p*
Motor vehicle registration plates **761**—401.22
Process, military offenders, forms **611**—ch 1
Records **611**—2.15
Security officers, retirement benefits **495**—4.6(4)*k*
Taxation deduction/exemption/exclusion, active duty **701**—40.5(2)*b*, 40.51, 40.58, 40.61–40.64, 80.2(2)*c*,*d*,*t*

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
See ENVIRONMENTAL PROTECTION COMMISSION: Permits

NATIVE AMERICANS
See INDIANS

NATURAL GAS
See GAS

NATURAL RESOURCE COMMISSION
See NATURAL RESOURCES DEPARTMENT

NATURAL RESOURCES DEPARTMENT
Administration
  Addresses **561**—1.4, 1.6, 3.3(2)
  Complaints/investigations **561**—ch 3
  Director **561**—1.3; **571**—1.4, ch 13, 19.4(7), 28.6, 29.2, 29.12, 111.7
  Divisions **561**—1.3(2)
  Programs **567**—1.2, 214.4, 218.4, 218.5
  Records, *see Records below*

All-terrain vehicles, *see MOTOR VEHCILES*
Attorney general representation **61**—1.3(2)*a*
Concessions **561**—ch 14
Contracts **561**—ch 8, 11.2; **567**—ch 218

Declaratory orders **561**—ch 6
Disclosure
Ecologically sensitive sites, transportation department **761**—4.9(11)
Environmental audits **567**—ch 12

Energy/geological resources, *see ENERGY AND GEOLOGICAL RESOURCES DIVISION*
Environmental protection division, *see ENVIRONMENTAL PROTECTION COMMISSION*
Geological survey bureau (GSB) **561**—1.3(2)*f*(2), 2.14(4); **565**—chs 50, 51
Groundwater
See also ENVIRONMENTAL PROTECTION COMMISSION
Contamination regulation **561**—1.2(11)
Hazard documentation **561**—ch 9; **571**—33.7
Withdrawal/storage **561**—1.2(12)

Hazardous chemical facilities, reports **605**—ch 104
Hearings/appeals **561**—1.3(1), ch 7, 10.12
Licenses **561**—1.2(4,9), 1.3(2)*c*(4), chs 12, 15; **567**—ch 16, *see also Natural Resource Commission below*
Natural resource commission
Agricultural lease program **571**—chs 21, 32
Barge fleeting **571**—ch 17
Birds, nongame **571**—76.1(1)
Blufflands protection fund, *see Loans, Blufflands Protection this subheading below*
Boats/boating, *see BOATS AND BOATING*
Bonds **571**—15.6(3,4,9), 15.7(3), 72.2, 72.3
Camping **571**—chs 61, 62
Complaints/investigations **561**—ch 3; **571**—ch 3
Concessions, state parks/recreation areas **571**—ch 14
Conflict of interest **571**—1.11, 12.7
Conservation education **571**—ch 12
Contracts **561**—1.3(2)*c*(6); **571**—ch 8, 12.9(4), 12.14, 12.15, ch 14, 22.5(1,2,4), 22.6(1,4), 22.6(5)*f*, 22.7, 22.8, 74.5(4), 74.6, 82.1
Cost-share programs
See also Resource Enhancement and Protection (REAP) this subheading below; Water Recreation Access Cost-Share Program this subheading below
Recreational facilities **571**—ch 29
Snowmobile/all-terrain vehicle registration revenue **571**—ch 28
Tree planting **571**—ch 34
Wildlife habitats **571**—chs 22, 74

Declaratory orders **571**—ch 6
Deer
Hunting, *see HUNTING*
HUSH program **571**—ch 116
Importation/transportation **571**—ch 104

Docks **567**—71.10; **571**—ch 16
Easements **567**—72.2(7)
Endangered species, *see Plants/Animals this subheading below*
Falconry **571**—chs 101, 102
Fees, land use **571**—ch 18
Firearms, *see FIREARMS; HUNTING*
Fish/fishing, *see FISH AND FISHING*

FLEP, *see Forests below*
Forests
See also Prairies, Native this subheading below; FORESTS
Forest land enhancement program (FLEP) **571**—ch 74
Grants, community forestry **571**—ch 34
Harvest **571**—54.4
Management **561**—1.2(6), 1.3(2)*e*
Plantings, nursery stock sales **571**—ch 71
Reservations **561**—1.3(2)*e*(2); **571**—chs 32, 73
Game, *Salvage, Fish/Game this subheading below; HUNTING*
Game management areas **571**—chs 51, 53
Ginseng **571**—54.3, ch 78
Grants administration **561**—1.2(11), 1.3(2)*c*,*d*; **571**—ch 12, 23.13, chs 27, 29, 33, 34, 116.8, *see also GRANTS*
Hearings/appeals **561**—1.3(1), ch 7, 10.12; **571**—12.17, 13.16, 13.17, 16.17(2,3)
Hunting, *see HUNTING*
Jurisdiction **571**—chs 18, 52, 77.4
Keggers **571**—ch 63
Lakes, *see LAKES*
Land
Blufflands protection program **571**—ch 24
Leases **561**—1.3(2)*c*(6); **571**—chs 18, 21
Private, forest land enhancement program (FLEP) **571**—ch 74
Quality **561**—1.3(1)*i*
Tax exemptions **571**—chs 25, 32
Use **571**—ch 18
Licenses
Collectors, scientific **571**—15.51–15.55, 111.1, 111.2
Definitions **571**—15.2(1), 15.17(1)
Depositaries **571**—15.6, 15.7
Falconry, *see HUNTING*
Fishing, *see FISH AND FISHING*
Fur harvesters, geese control **571**—114.15
Hunting, *see HUNTING*
Issuance **561**—1.2(4,9), 1.3(2)*c*(4)
Lost/stolen **571**—15.7
Sales, electronic **571**—15.5
Suspension/denial **283**—37.1; **571**—15.16(1,9), 15.17, 15.51–15.55
Loans, blufflands protection **571**—ch 24
Meetings **571**—ch 1
Metal detectors **571**—ch 64
Mushrooms/asparagus, *see Plants/Animals this subheading below*
Mussels **571**—ch 87
Nursery stock sales **571**—ch 71
Nuts **571**—54.2
Officials, sales **571**—1.11
Parks, *see PARKS/RECREATION AREAS*
Permits
Barge fleets **571**—ch 17
Construction
Generally **571**—ch 13
Docks **571**—ch 16
Endangered species **571**—77.4

NATURAL RESOURCES DEPARTMENT (cont'd)
Natural resource commission
Permits

Fireworks **571**—ch 65
Fish/fishing, *see FISH AND FISHING*
Hunting, *see HUNTING*
Issuance **561**—1.2(1,2,5,10–12), 1.3(2)*c*(4,6), 1.3(2)*g*; **567—**118.2(2), 118.5, 118.8
Land use **571**—ch 18
Metal detectors **571**—64.3
Parks/recreation areas
Motor vehicles **571**—61.4(5)*k*, 61.7(8,12), 66.4
Special events **571**—61.7(16)
Sand/gravel removal **561**—1.3(2)*c*(6); **571**—ch 19
Taxidermy **571**—93.5
Trail use, Saylorville **571**—66.4(4)
Wildlife
Endangered species **571**—77.4(3,5–7), 111.8, 114.12
Nuisance control **571**—ch 114
Salvage/rehabilitation **571**—ch 111

Plants/animals
Aquatic invasive **571**—ch 90
Endangered species **561**—1.2(9); **567**—113.6(2)*c*,*g*, 113.6(4)*l*; **571**—chs 77, 111, 113, 114.12
Fruit/nuts/ginseng **571**—54.2, 54.3
Mushrooms/asparagus **571**—54.1
Nursery stock **571**—1.3(2)*e*, ch 71
Unprotected nongame **571**—ch 76

Prairies, native **561**—1.2(6), 1.3(2)*e*; **571**—chs 25, 32
Preserves, state **571**—61.2, chs 112, 115, *see also Preserves Board, Advisory below; HUNTING*
Property, seizure/disposition **571**—ch 10
Records **561**—2.14(2); **571**—ch 2, *see also Records below*
Recreation, grants
See also BOATS AND BOATING; Trails this subheading below
Lands and waters conservation fund **571**—ch 27
Local facilities, infrastructure program **571**—ch 29

Refuges **571**—chs 52, 66
Relocation assistance **571**—ch 26
Resource enhancement and protection (REAP) **571**—chs 32, 33
River crossings, pipelines **199**—10.14
Rock climbing/rappelling **571**—51.11
Rule making **571**—chs 4, 5, 11
Salvage, fish/game **571**—ch 80, 111.1, 111.3, 111.8
Sand/gravel **561**—1.3(2)*c*(6); **571**—ch 19
Saylorville multiuse trail **571**—ch 66
Snakes **571**—ch 76
Snowmobiles, *see SNOWMOBILES*
Stamps, waterfowl/trout/habitat
Design contest **571**—ch 9
Sales, promotion programs, wildlife **571**—chs 22, 23

Taxidermy **571**—93.5
Timber buyers **561**—1.2(6); **571**—ch 72
Trails **571**—ch 29, 33.40(1), chs 66, 67
Trapping, *see Wildlife: Nuisance Control below; HUNTING*
Trees, *see Forests this subheading above*
Trotlines **571**—ch 85

Turtles **571**—ch 86
Wastes, hazardous/solid **561**—1.2(10), 1.3(2)*i*; **571—**ch. 113
Water recreation access cost-share program
Agreements **571**—ch 30
Application **571**—30.8
Cost-sharing rates **571**—30.9
Eligibility **571**—30.3, 30.4, 30.11
Funding **571**—30.2, 30.13, 30.14
Priorities **571**—30.7
Reimbursement procedures **571**—30.13
Site control **571**—30.11
Sponsorship, joint **571**—30.10
Waterfowl, captive-reared **571**—ch 93, *see also HUNTING*
Water pollution/use **265**—ch 26; **561**—1.2(11,12); **571**—ch 113
Watersheds **571**—ch 31, *see also SOIL CONSERVATION DIVISION*
Water trails development/low-head dam public hazard programs
Advisory committee **571**—30.63
Definitions **571**—30.51
Eligibility **571**—30.58, 30.59
Evaluations **571**—30.57, 30.61
Funding **571**—30.52–30.56, 30.60, 30.62
Wildlife
Aquatic, pollution destruction **571**—ch 113
Habitats
See also Game Management Areas this subheading above
Agricultural leases **571**—ch 21
Development projects, stamp revenues **571**—chs 22, 23
Division **561**—1.2(4), 1.3(2)*h*, 1.4(5–7)
Forest land enhancement program (FLEP) **571**—ch 74
Nursery stock sales **571**—ch 71
Refuges **571**—ch 52
Tax exemptions **571**—chs 25, 32
Hunting, *see HUNTING*
Nuisance control **571**—ch 114
Permits, *see Permits this subheading above*
Violator compact **571**—15.17
Nature store **561**—ch 11
Organization **561**—ch 1
Permits, *see Natural Resource Commission above; ENVIRONMENTAL PROTECTION COMMISSION*
Preserves board, advisory **561**—1.3; **571**—61.2; **575**—chs 1–3
Procurements **261**—ch 54; **641**—ch 10
Records
Generally, public/fair information **561**—ch 2
Licensees **567**—16.3
Rule making **561**—2.15(1), chs 4, 5, 10
Tanks, underground storage (UST), *see ENVIRONMENTAL PROTECTION COMMISSION*
Timber sales **561**—1.2(6), 8.5; **571**—54.4
Tires, waste, stockpiles **567**—ch 218
Welcome center program, project review committee **261**—102.4(6)

NAVY
See MILITARY

NEWSPAPERS
See PUBLICATIONS

NITRATES
See ENVIRONMENTAL PROTECTION: Water Quality: Supply

NON-ENGLISH SPEAKING PERSONS
See EMPLOYMENT: Employees; LATINO AFFAIRS DIVISION; REFUGEES; TEACHERS: English, Second Language

NOTARY PUBLIC
Registration/certification **721**—1.6, 5.14(8), ch 43

NPDES
See ENVIRONMENTAL PROTECTION COMMISSION: Permits

NUCLEAR ENERGY
See also ELECTRIC UTILITIES; RADIATION MACHINES AND RADIOACTIVE MATERIALS
Facilities, emergency planning **605**—7.3(4)*d*(6)

NURSERIES, HORTICULTURAL
See also PLANTS
Damages, deer **571**—106.11
Dealers
  Certificates **21**—46.9, 46.13
  Definition **21**—46.6
  Shipments **21**—46.7; **761**—400.47
Definitions **21**—46.1–46.6; **871**—23.26(2,3)
Greenhouses, fuel taxation exemption **701**—17.3(1)*d*, 18.57(3)
Growers **21**—46.4, 46.7
Income, taxation **701**—40.38(2)
Insects/diseases **21**—46.8, 46.15
Inspections **21**—1.2(3), 46.7, 46.8, 46.14
Natural resources department sales **571**—ch 71
Stock
  Definition **21**—46.1
  Standards **21**—46.2, 46.12
  Storage/display **21**—46.10, 46.11
  Taxation **701**—19.10(2)*g*, 219.11(2)*g*

NURSES
See also HEALTH CARE FACILITIES; HOSPITALS
Address/name change **655**—3.7(1), 4.6(3)*c*
Advanced practitioners, *see Registered below*
Aides **441**—81.1, 81.16
Anesthetists **441**—77.36(3), 79.1(5)*j*, 79.1(16)*c*(4), 79.3(2)*d*(5); **655**—7.2(1)*d*
Assisted living facilities **481**—67.1, 67.5(5), 67.9(5), 67.16, 69.29(6)
Association, emergency preparedness advisory committee **641**—114.4(1)*l*
Background checks **655**—2.11, 3.1, 3.4, 3.5, 3.7(5)*d*, 4.11
Board
  Address **655**—1.1
  Adjudicative proceedings, emergency **655**—4.38
  Appeals **655**—4.35, 5.3(5)*f*

NURSES (cont'd)
Board

Authority **655**—4.1, 5.2
Committee
Licensee review **655**—4.12
Utilization/cost control review (U.C.C.R.) **655**—12.4–12.7

Contested cases, *see Hearings this subheading below*
Declaratory orders **655**—1.3(4), ch 9
Discipline **655**—3.5(2)*c*, ch 4, 11.2(5), 11.3(2)*d*,*f*, 11.4(4), ch 13, 16.3
Hearings **655**—1.3(5), 3.9, ch 4, 5.3(5), ch 13
Informal settlements **655**—4.9
Meetings **655**—1.3(2)
Newsletter **655**—1.4
Organization **655**—ch 1
Records, *generally*, public/fair information **655**—ch 11, 14.3(1)
Rule making **655**—chs 8, 10, 15

Certification, organizations **655**—12.3
Children, get-well centers **441**—109.14
Child support noncompliance **641**—ch 192; **655**—ch 17
Colleges/schools, programs
Accreditation **655**—2.6(1)*g*, 3.1
Administration **655**—2.6
Approvals **281**—52.5, 52.13; **655**—2.1, 2.2, 2.15(3), 3.1
Changes **655**—2.15(2,3)
Curriculum **655**—2.8
Definitions **655**—2.1
Evaluations **655**—2.6(1)*i*
Facilities **655**—2.7, 2.12
Faculty **283**—ch 34; **655**—2.2(2)*a*,*f*, 2.6(1)*h*, 2.6(2), 2.7(1), 2.9
Funds **283**—ch 34; **641**—110.16, 110.21; **655**—2.6(1)*d*
Preceptors **655**—2.1, 2.13
Records **655**—2.10(3,4)
Reports **655**—2.2(4)*b*, 2.14, 2.15
Scholarships **283**—11.1(6)
Students **655**—2.10

Committee, utilization/cost control review (U.C.C.R.) **655**—12.4–12.7
Complaints **655**—4.2
Continuing education
Abuse identification/reporting **655**—3.7(3)*c*–*g*
Definitions **655**—5.1
Licensee requirements **655**—3.6, 3.7(3)*c*–*g*, 3.7(5)*c*,*d*, 4.6(3)*g*, 5.2, 7.2(10)
Providers
Approval criteria **655**—5.3(1–4)
Disciplinary procedures **655**—5.3(5)
Records **655**—5.3(2)*c*, 5.3(3)*a*(7), 5.3(6)*a*
Relinquishment **655**—5.3(6)
Self-study **655**—5.1, 5.2(2)*f*, 5.3(2)*b*(14), 5.3(2)*f*

Day services, adult **481**—67.1, 67.5(5), 67.9(5), 67.16
Debts, state, noncompliance **641**—ch 194
Definitions **191**—36.4(10); **441**—22.4(5), 24.1, 81.1; **655**—1.1, 2.1, 3.1, 4.14, 5.1, 6.1, 7.1, 11.1, 12.2, 13.1, 16.1
Diabetes education program **641**—ch 9
Discipline, *see Board above*

Disease exposure, emergency care providers, notification **641**—11.49, 11.51–11.53
Drugs/intravenous therapy
Controlled substances, emergency rooms **657**—7.12(2)*d*
Correctional facilities **657**—15.8
Dispensation, verification **657**—9.15(1)*a*
Hospital emergency department **657**—7.12(5)
LPN restrictions **655**—6.3(3,4), 6.5(3–5)
Orders, electronic records **657**—7.8(3)
Education, *see Colleges/Schools, Programs above*
Emergency medical services advisory council **641**—130.3(2)*b*
Home care aides **641**—80.10(4), 80.10(5)*a*
Home health agencies **441**—77.30(4), 77.33(5), 77.37(19), 78.9(3), 78.28(9), 78.37(5), 83.2(2)*a*(3), 88.65(3)*a*(13), *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
Hospice **481**—53.9
Hospitals, *see HOSPITALS*
Immunizations **641**—ch 7
Impaired practitioner, review committee **655**—4.12
Inactive practitioners, *see Licensure/Registration below*
In-home health care **441**—50.2(3), 52.1(5), 83.26, ch 177, *see also Home Care Aides above; Home Health Agencies above*
Jails **655**—6.6(5)
Licensed practical nurse (LPN) **281**—41.403(2); **641**—80.6(1), 80.10(4,5,7), ch 88; **655**—6.2(5)*c*, 6.3, 6.5, 6.6
Licensure/registration
Advanced practitioner **655**—3.1, 7.1, 7.2(5–9,11)
Applications **655**—3.3–3.6, 7.2(5,9), 16.2
Certificates/wallet cards **655**—3.1"9," 3.5(4)*b*, 3.7(3)*b*, 3.7(4–7)
Compact **655**—2.6(2)*a*, 2.9(2)*a*, 3.2(2)*a*, 6.5(5), 7.1, 12.2, ch 16
Continuing education, *see Continuing Education above*
Delinquency **655**—3.7(4), 4.7
Denial **641**—192.2, 194.2, 195.2; **655**—3.6"6," 3.9, 7.2(8,11)
Disabled **655**—3.4(5)
Duplicates **655**—3.7(6)
Endorsements/authorizations **282**—13.28(28), 16.1"2," 16.3, 16.7; **655**—3.1, 3.5, 3.6, 3.7(2)
Examinations **655**—2.14, 3.1, 3.3, 3.4, 3.6"6," 16.2(1)
Exceptions **655**—3.2(2)
Fees **655**—3.1, 3.4(3,4,6), 3.5(2)*b*, 3.7(4), 3.7(5)*c*,*d*, 4.11
Foreign education **655**—3.2(2)*d*, 3.4(4)
Hospital employment **481**—51.9(4,5)
Inactive status **655**—3.1, 3.7(5), 5.2(4)
Mandatory **655**—3.2
Multistate practice **655**—ch 16
Out-of-state/foreign, *see Compact this subheading above*
Qualifications **655**—3.3–3.5
Reactivation **655**—3.1, 3.7(5)
Records **655**—4.6(1), 11.3(2)*f*, 11.4, 11.5, 16.4
Refugees, recredentialing **441**—61.16
Reinstatement **641**—192.2, 192.3(5,7), 194.2(5), 194.3(5), 195.3(7); **655**—3.1, 3.7, 4.11
Renewal **641**—192.2, 192.3(5), 194.2, 195.2, 195.3(7); **655**—3.1, 3.6"7," 3.7, 5.2(2)*a*, 5.2(4)*a*, 5.2(5)*g*, 7.2(9,11), 11.4(3)
Roster **655**—11.5
Special **655**—3.6
Surrender, voluntary **655**—4.10

Suspension/revocation **641**—192.3, 194.3, 195.3; **655**—3.6"6," 4.7, 4.11, 11.4, ch 17
Temporary **655**—3.1, 3.5(4)
Verification/validation **655**—3.1, 3.4(4), 3.5(2,4), 3.8

Loans, student
Forgiveness program **283**—ch 34
Noncompliance **283**—34.6; **641**—ch 195; **655**—ch 17
Repayment program **641**—110.21

Medicaid providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
Midwives **655**—7.1, 7.2(1)*b*
Occupational, disease/poisonings/conditions, reports **641**—1.4(1)*g*, 1.6(1)*f*, 1.6(3)*d*
Pediatric **481**—51.34(1)
Peer review committee **655**—4.4"3," 4.5
Private duty **441**—78.1(7), 78.9(10), 78.28(9), 79.1(2)p.8
Public health nursing **641**—ch 80
Registered
Advanced practitioners **441**—24.1, 79.3(2)*d*(6); **481**—51.5(3), 57.15(6), 58.14(8), 63.15(6); **641**—41.1(3)*a*(7), 42.1(2), 109.6, 110.21; **655**—3.1"4," 6.1, ch 7; **657**—10.1; **701**—231.6(3)*h*, *see also Immunizations above; HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
Certification **655**—12.2, 12.3
Clinical specialist **655**—7.1, 7.2(1)*a*
Radiographers **655**—6.4(1)
Rescue squad/ambulance staff
Orders **641**—132.9(6)*d*
Training requirements **655**—6.4(2)

Standards **655**—6.2
Supervision **655**—6.2(5), 6.5(1), 6.6(5), 6.7, 7.2(2)
Teachers **283**—ch 34; **655**—2.9(2), 3.6
Volunteers **641**—ch 88

Schools
Education programs, *see Colleges/Schools, Programs above*
Public **281**—12.4(12), 41.9(3)*l*, 41.10(2)*c*, 41.12(11), 41.34(1), 41.34(3)*m*, 41.96, 41.402(3), 41.403(2); **282**—13.28(28), 16.1"2," 16.3, 16.7; **641**—1.4(1)*b*, 1.6(1)*b*, ch 67; **655**—6.3(6)*b*, 6.6(2)

Scope of practice **655**—6.2, 6.3
Telecommunications network access **751**—7.7(1)*v*, 7.11
Trauma education **641**—ch 137
Utilization/cost control review committee, *see Committee, Utilization/Cost Control Review (U.C.C.R.) above*
Violations, *see Board: Discipline above*
Volunteers **641**—ch 88

NURSING FACILITIES
See HEALTH CARE FACILITIES

NURSING HOME ADMINISTRATORS
See also HEALTH CARE FACILITIES
Address/name change **645**—4.4(2,3), 144.2(27)
Advertising **645**—144.2(5)
Board
*See also PROFESSIONAL LICENSURE DIVISION**
Address **645**—4.4(1)
Authority **645**—4.3(7)
Discipline **645**—4.2(3), 4.13, 143.7, ch 144
Hearings **645**—4.15(3,4), 5.10(8), 144.5(3,4)

Meetings **645**—4.3, 4.6, 13.3, ch 17
Organization **645**—4.3
Public health department support **641**—170.7(3)*c*(11)

Child support noncompliance **641**—ch 192; **645**—4.16(1)
Confidentiality **645**—144.2, 144.5(5)
Debts, state, nonpayment **645**—4.16(3), ch 194
Definitions **645**—4.1, 141.1, 143.1, 144.1
Discipline, *see Board above*
Education
Accreditation, institution **645**—141.4
Continuing
Abuse, identification/reporting **645**—141.9(3,8)
Definitions **645**—143.1
Exemptions **645**—4.12, 4.14, 143.5, 143.6
Hours **645**—141.9(8), 143.1–143.3
Reports **645**—4.11, 143.4, 144.2(24)
Standards **645**—143.3

Practicum **645**—141.4, 141.5

Ethics **645**—144.2(31)
Impaired practitioner review committee **641**—ch 193; **645**—144.2(33)
Inactive practitioners, *see Licenses below*
Licenses
Application **645**—141.2, 141.7, 141.9
Certificates/wallet cards **645**—4.8, 4.9, 5.10(5)
Continuing education, *see Education above*
Denial **641**—192.2, 194.2, 195.2; **645**—4.10
Display **645**—141.9(7)
Endorsement **645**—141.7
Examinations **645**—4.15, 141.3, 144.5
Fees **641**—192.2(5), 192.3(5), 194.2(5), 194.3(5), 195.3(7); **645**—5.10, 141.9(5)
Inactive **645**—141.1, 141.9(6), 143.1, 144.2(28)
Preceptors **645**—141.5(1)*e*
Provisional **645**—5.10(9)
Qualifications **645**—141.4
Reactivation **645**—5.10(4), 141.1, 141.15, 143.2(4)
Reciprocity **645**—4.7
Reinstatement **641**—192.2, 192.3(5,7), 194.2(5), 194.3(5), 195.3(7); **645**—141.16
Renewal **641**—192.2, 192.3(5), 194.2, 195.2, 195.3(7); **645**—4.13"3," 5.10(2,3), 141.9
Suspension/revocation **641**—192.3, 194.3, 195.3; **645**—144.2(15,28), 144.3

Loans, student, noncompliance **641**—ch 195; **645**—4.16(2)
Malpractice **645**—144.2(18)
Provisional **645**—5.10(9), 141.6
Reports **645**—4.15(1)*f*, 143.4, 144.2(15–18,24,25,27), 144.5(1)*f*
Scope of practice **645**—144.2(6)

NUTRITION
See also AGING, DEPARTMENT ON; FOOD
Dietitians, licensing **645**—chs 81, 82, *see also DIETITIANS*
Public health department services **641**—170.7(6)
WIC (women/infants/children) program **641**—ch 73

*Rules **645**—chs 4, 6–18 apply to all professional licensure boards

NUTS

Gathering, natural resource commission lands **571**—54.2
Orchards, water protection practices **27**—12.81(3)
Producers
  Deer, depredation **571**—106.11
  Horticultural bureau assistance **21**—1.2(8)*a*

OBSCENITY
Candidates, public office, property misuse **351**—6.8(2)*b*
Forfeited materials, disposal **61**—33.4(2)
Pornography, corrections institutions **201**—20.6(5)

OBSTETRICS
See HOSPITALS

OCCUPATIONAL SAFETY AND HEALTH
See LABOR SERVICES DIVISION

OCCUPATIONAL THERAPISTS
See PHYSICAL/OCCUPATIONAL THERAPISTS

OIL
See also FUEL; PETROLEUM
Crude, *see PETROLEUM*
Drilling
Generally **561**—1.2(7), 1.3(2)*f*; **565**—ch 51, *see also ENERGY AND GEOLOGICAL RESOURCES DIVISION; WELLS*
Programs, registration **191**—50.66(2)
Taxation **701**—40.29, 40.30, 53.8(2)

Fire safety
Burning equipment installation **661**—51.250
Storage tanks **661**—51.201, ch 224

Household materials, hazardous **567**—144.3
Pipeline transmission **199**—ch 13; **565**—51.1(27,35), *see also PIPELINES*
Production, *see Drilling above*
Recycled/waste **567**—23.1(4)*ad*, chs 119, 135 Appendix B p.76, 77, 140.7
Tanks, *see ENVIRONMENTAL PROTECTION COMMISSION; PETROLEUM*
Taxation, *see Drilling above*
Wells, *see Drilling above*

OLDER AMERICANS ACT OF 1965
See AGING, DEPARTMENT ON: Federal Regulations

OMBUDSMAN
See also CITIZENS' AIDE (OMBUDSMAN)
Early ACCESS system, early intervention disputes **281**—120.85
Long-term care, *see AGING, DEPARTMENT ON: Advocate/Ombudsman Program*

OPEN BURNING
See ENVIRONMENTAL PROTECTION COMMISSION: Air Quality

OPTICIANS
Medical assistance providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*

OPTOMETRISTS AND OPTOMETRY
Address/name change **645**—4.4(2,3), 183.2(24)
Advertising **645**—183.2(5)
Board
*See also PROFESSIONAL LICENSURE DIVISION**
Address **645**—4.4(1), 180.2(1)*a*

* Rules **645**—chs 4, 6–18 apply to all professional licensure boards

Discipline **645**—4.2(3), 4.3(7)*f*, 4.13, 4.15(7), 180.5(8), ch 183
Hearings **645**—4.10(2,3), 4.15(3,4), 5.12(8)
Meetings **645**—4.3, 4.6, 13.3, ch 17
Organization **641**—4.3

Child support noncompliance **641**—ch 192; **645**—4.16(1)
Continuing education
Abuse identification/reporting **645**—180.5(3,4), 181.3(2)*b*(4)
Exemptions **645**—4.12, 4.14
Hours **645**—180.11(3)*a*(2), 180.11(3)*b*(2), 181.1–181.3
Reports **645**—4.11, 180.5(3)*b*, 180.5(4), 183.2(21)
Standards **645**—181.3

Debts, state, noncompliance **641**—ch 194; **645**—4.16(3)
Definitions **645**—4.1, 180.1, 181.1, 183.1
Discipline, *see Board above*
Drug abuse **645**—183.2(6,7), 183.3"7," *see also Prescriptions below*
Education **645**—180.2(2), 180.3(3,7), *see also Continuing Education above*
Ethics **645**—183.2(28)
Fraud **645**—183.2(1,3,5,9)
Impaired practitioner review committee **641**—ch 193; **645**—ch 16, 183.2(30)
Licenses
Applications **645**—180.2, 180.3, *see also Reinstatement/Renewal this subheading below*
Certificates/wallet cards **645**—4.8, 4.9, 5.12(5), 180.5(5–7)
Certifications
CELMO **645**—180.1, 180.3(7), 180.11(3), 181.1, 181.3(2)*a*(4), 181.3(2)*c*
Change **645**—180.2(2)
Therapeutically certified **645**—180.1, 180.2(2)

Denial **641**—192.2, 194.2, 195.2; **645**—4.10
Display **645**—180.5(6)
Endorsements **645**—5.12(1), 180.1, 180.3
Examinations **645**—4.15, 180.2(1)*e*
Fees **641**—192.2(5), 192.3(5), 195.3(7); **645**—5.12, 180.5(7)
Inactive **645**—180.1, 180.5(8), 181.1
Reactivation **645**—5.12(4), 180.1, 180.5(3,8), 180.11, 181.2(1,4)
Reciprocity **645**—4.7, 5.12(1)
Reinstatement/renewal **641**—192.2, 192.3(5,7), 194.3(5), 195.2; **645**—4.13"3," 5.12(2,3), 180.1, 180.2(2), 180.3(8), 180.5, 180.12, 181.2(1,2,4), *see also Continuing Education above*
Suspension/revocation **641**—192.3, 194.3, 195.3; **645**—180.12, 183.2(13,25), 183.3

Loans, student, noncompliance **641**—ch 195; **645**—4.16(2)
Malpractice **645**—183.2(16)
Medical assistance providers **441**—77.6, 78.6, 78.28(3), 79.1(2)p.10, 79.3(2)*d*(7), 79.14(1)*b*(21), *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid): Providers*
Prescriptions
Contact lenses/eyeglasses **645**—182.3
Drugs **645**—182.4

Reports **645**—4.15(1)*f*, 180.5(3,4), 182.2, 183.2(13–16,22,24), *see also Continuing Education above*
Scope of practice **645**—183.2(2)*a*, 183.2(4)
Violations, *see Board: Discipline above*

ORCHARDS
Nut/Christmas tree, water protection practices **27**—12.81(3)
Real estate assessment, taxation **701**—71.1(3), 71.3, 80.9

ORGAN DONATIONS
See also HOSPITALS; TRANSPLANTS
Employees, leaves **11**—63.20
Procurement organizations, taxation exemption **701**—17.30
Records **441**—9.10(25)

ORGANIC AGRICULTURAL PRODUCTS
See AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT; FOOD

ORGANIZED DELIVERY SYSTEM (ODS)
Healthy and well kids in Iowa (HAWK-I) program **441**—ch 86
Licensure/regulation **641**—ch 201, *see also PUBLIC HEALTH DEPARTMENT*

ORPHANS, WAR
See WAR ORPHANS

ORTHOPEDIC SHOES
See SHOES

OSHA (OCCUPATIONAL SAFETY/HEALTH ACT)
See LABOR SERVICES DIVISION

OSTEOPATHIC MEDICINE
See also PHYSICIANS AND SURGEONS
College student aid funds **283**—ch 14

OWI
See MOTOR VEHICLES: OWI (Operating While Intoxicated)