

State of Iowa

Iowa
Administrative
Code
Supplement

Biweekly
June 28, 2023



Published by the
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

The Iowa Administrative Code (IAC) Supplement is published biweekly pursuant to Iowa Code sections 2B.5A and 17A.6. The Supplement is a compilation of updated Iowa Administrative Code chapters that reflect rule changes which have been adopted by agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17, 17A.4, and 17A.5 and published in the Iowa Administrative Bulletin bearing the same publication date as the one for this Supplement. To determine the specific changes to the rules, refer to the Iowa Administrative Bulletin. To maintain a loose-leaf set of the IAC, insert the chapters according to the instructions included in the Supplement.

In addition to the rule changes adopted by agencies, the 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 or suspension imposed by the ARRC pursuant to section 17A.8(9) or 17A.8(10); rescission of a rule by the Governor pursuant to section 17A.4(8); nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa; other action relating to rules enacted by the General Assembly; updated chapters for the Uniform Rules on Agency Procedure; or an editorial change to a rule by the Administrative Code Editor pursuant to Iowa Code section 2B.13(2).

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 515.242.6873

Aging, Department on[17]

Replace Analysis
Replace Chapter 19

Education Department[281]

Replace Analysis
Replace Chapter 14

Human Rights Department[421]

Replace Chapter 1
Replace Chapters 20 to 25
Replace Chapters 30 and 31
Replace Chapters 40 and 41

Human Services Department[441]

Replace Analysis
Replace Reserved Chapter 6 with Chapter 6
Replace Chapter 9
Replace Chapter 58

Inspections and Appeals Department[481]

Replace Chapter 58

Natural Resource Commission[571]

Replace Chapter 108

Homeland Security and Emergency Management Department[605]

Replace Analysis
Replace Reserved Chapter 11 with Chapter 11

Public Health Department[641]

Replace Analysis
Replace Chapter 175
Replace Chapter 178

Treasurer of State[781]

Replace Analysis
Replace Chapter 20

AGING, DEPARTMENT ON[17]

Prior to 5/20/87, see Commission on the Aging[20]
 Delay: Effective date (June 24, 1987) of Chapters 1 to 18 delayed 70 days pursuant to Iowa Code section 17A.4(5) by the
 Administrative Rules Review Committee at their June 9, 1987, meeting.
 [Prior to 1/27/10, see Elder Affairs Department[321]]

CHAPTER 1

INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

- 1.1(231) Authority and purpose
- 1.2(231) Other regulations and order of precedence
- 1.3(231) Applicability
- 1.4(231) Abbreviations
- 1.5(231) Definitions

CHAPTER 2

DEPARTMENT ON AGING

- 2.1(231) Mission statement
- 2.2(231) Definitions
- 2.3(231) Department established
- 2.4 Reserved
- 2.5(231) Organizational units of the department
- 2.6 to 2.8 Reserved
- 2.9(231) Department complaint and appeal procedures
- 2.10(231) Severability

CHAPTER 3

COMMISSION ON AGING

- 3.1(231) Definitions
- 3.2(231) Purpose of the commission
- 3.3(21,231) Organization of the commission and proceedings
- 3.4(231) Commission duties and authority

CHAPTER 4

DEPARTMENT PLANNING RESPONSIBILITIES

- 4.1(231) Definitions
- 4.2(231) State plan on aging
- 4.3(231) Planning and service areas
- 4.4(231) Area agencies on aging
- 4.5(231) Continuity of services in the event of appeal of designation
- 4.6(231) Dededesignation of area agency on aging
- 4.7(231) Continuity of services in the event of dedesignation or appeal of dedesignation
- 4.8(231) Severability clause

CHAPTER 5

DEPARTMENT FISCAL OPERATIONS

- 5.1(231) Funds to area agencies on aging
- 5.2(231) Distribution of Older Americans Act funds to area agencies on aging
- 5.3(231) Distribution of state funds
- 5.4(231) Posting of formulas for distribution
- 5.5(231) Priority service expenditures
- 5.6(231) Match requirements for Older Americans Act funds
- 5.7(231) Match requirements for state funds
- 5.8(231) Contributions

- 5.9(231) General reporting requirements
- 5.10(231) Redistribution
- 5.11(231) State reviews and audits
- 5.12(231) Acquisition of goods and services
- 5.13(231) Records—contract administration
- 5.14(231) Correction of deficiencies

CHAPTER 6

AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

- 6.1(231) Definitions
- 6.2(231) Area plan
- 6.3(231) Area agency administration
- 6.4(231) Confidentiality and disclosure of AAA information
- 6.5(231) AAA contact information
- 6.6(231) Duties of AAA
- 6.7(231) AAA board of directors
- 6.8(231) AAA advisory council
- 6.9(231) Emergency situations
- 6.10(231) AAA procedures manual
- 6.11(231) Contracts
- 6.12(231) Direct service
- 6.13(231) Waivers of priority service expenditures
- 6.14(231) Requirements for service providers
- 6.15(231) Entrepreneurial activities of AAA
- 6.16(231) Severability

CHAPTER 7

AREA AGENCY ON AGING SERVICE DELIVERY

- 7.1(231) Definitions
- 7.2(231) Service delivery
- 7.3(231) Outreach for greatest need
- 7.4(231) Delivery of service
- 7.5(231) Funding for services and program facilities
- 7.6(231) Compliance with health, safety and construction requirements
- 7.7(231) Term of use of an acquired or constructed facility
- 7.8(231) Restrictions
- 7.9(231) Information and assistance services
- 7.10(231) Legal assistance requirements
- 7.11(231) Disease prevention and health promotion under Title III-D of the Act
- 7.12(231) Nutrition services
- 7.13(231) AOA NSIP programs
- 7.14(231) Nutrition performance standards
- 7.15(231) Food standards
- 7.16(231) Food-borne illness
- 7.17(231) Menus
- 7.18(231) Special dietary needs
- 7.19(231) Congregate nutrition services
- 7.20(231) Eligibility for meals at congregate nutrition sites
- 7.21(231) Home-delivered meals
- 7.22(231) Noncompliance
- 7.23(231) Requirements for opening or closing congregate nutrition sites
- 7.24(231) Evaluation of sites

CHAPTER 8
LONG-TERM CARE OMBUDSMAN

8.1(231)	Purpose
8.2(231)	Interference
8.3(231)	Monetary civil penalties—basis
8.4(231)	Monetary civil penalties—notice of penalty
8.5(231)	Monetary civil penalties—appeals
8.6(231)	Certified volunteer long-term care ombudsman program
8.7(231)	Managed care ombudsman program

CHAPTERS 9 and 10
Reserved

CHAPTER 11
WAIVERS FROM ADMINISTRATIVE RULES

11.1(17A,231,ExecOrd11)	Definitions
11.2(17A,231,ExecOrd11)	Scope of chapter
11.3(17A,231,ExecOrd11)	Applicability of chapter
11.4(17A,231,ExecOrd11)	Criteria for waiver
11.5(17A,231,ExecOrd11)	Filing of petition
11.6(17A,231,ExecOrd11)	Content of petition
11.7(17A,231,ExecOrd11)	Additional information
11.8(17A,231,ExecOrd11)	Notice
11.9(17A,231,ExecOrd11)	Hearing procedures
11.10(17A,231,ExecOrd11)	Ruling
11.11(17A,22,231,ExecOrd11)	Public availability
11.12(17A,22,231,ExecOrd11)	Summary reports
11.13(17A,231,ExecOrd11)	Cancellation of a waiver
11.14(17A,231,ExecOrd11)	Violations
11.15(17A,231,ExecOrd11)	Defense
11.16(17A,231,ExecOrd11)	Judicial review
11.17(17A,231,ExecOrd11)	Severability

CHAPTER 12
Reserved

CHAPTER 13
RULES AND PRACTICES IN CONTESTED CASES

13.1(17A)	Scope and applicability
13.2(17A)	Definitions
13.3(17A)	Time requirements
13.4(17A)	Requests for contested case proceeding
13.5(17A)	Notice of hearing
13.6(17A)	Presiding officer
13.7(17A)	Waiver of procedures
13.8(17A)	Telephone proceedings
13.9(17A)	Disqualification
13.10(17A)	Consolidation—severance
13.11(17A)	Pleadings
13.12(17A)	Service and filing of pleadings and other papers
13.13(17A)	Discovery
13.14(17A)	Subpoenas
13.15(17A)	Motions

13.16(17A)	Prehearing conference
13.17(17A)	Continuances
13.18(17A)	Withdrawals
13.19(17A)	Intervention
13.20(17A)	Hearing procedures
13.21(17A)	Evidence
13.22(17A)	Default
13.23(17A)	Ex parte communication
13.24(17A)	Recording costs
13.25(17A)	Interlocutory appeals
13.26(17A)	Final decision
13.27(17A)	Appeals and review
13.28(17A)	Applications for rehearing
13.29(17A)	Stays of department actions
13.30(17A)	No factual dispute contested cases
13.31(17A)	Emergency adjudicative proceedings
13.32(17A)	Informal settlement

CHAPTER 14

IOWA FAMILY CAREGIVER SUPPORT PROGRAM

14.1(231,249H)	Purpose
14.2(231,249H)	Definitions
14.3(231,249H)	Eligibility for services
14.4(231,249H)	Priorities for service
14.5(231,249H)	Coordination
14.6(231,249H)	Service categories
14.7(231,249H)	Conflict of interest
14.8(231,249H)	Confidentiality
14.9(231,249H)	Quality standards
14.10(231,249H)	Reports
14.11(231,249H)	Failure to meet program requirements; waiver of standards
14.12(231,249H)	Severability

CHAPTER 15

ELDER ABUSE PREVENTION AND AWARENESS

15.1(231)	Purpose
15.2(231)	Definitions
15.3(231)	Project administration
15.4(231)	Contractor responsibilities
15.5(231)	Funding restrictions
15.6(231)	Reallocation of funds
15.7(231)	Eligibility
15.8(231)	Assessment intake
15.9(231)	Release of information
15.10(231)	Assessment
15.11(231)	Monitoring and reassessment
15.12(231)	Purchase of service
15.13(231)	Case records
15.14(231)	Refusal of assistance
15.15(231)	Termination or limitation
15.16(231)	Confidentiality and disclosure
15.17(231)	Legal representatives

- 15.18(231) Appeals
- 15.19(231) Conflict of interest
- 15.20(231) Severability

CHAPTER 16

Reserved

CHAPTER 17

PETITION FOR RULE MAKING

(Uniform Rules)

- 17.1(17A) Petition for rule making
- 17.3(17A) Inquiries

CHAPTER 18

DECLARATORY ORDERS

- 18.1(17A) Petition for declaratory order
- 18.2(17A) Notice of petition
- 18.3(17A) Intervention
- 18.4(17A) Briefs
- 18.5(17A) Inquiries
- 18.6(17A) Service and filing of petitions and other papers
- 18.7(17A) Consideration
- 18.8(17A) Action on petition
- 18.9(17A) Refusal to issue order
- 18.10(17A) Contents of declaratory order—effective date
- 18.11(17A) Copies of orders
- 18.12(17A) Effect of a declaratory order

CHAPTER 19

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 19.1(17A,22) Definitions
- 19.3(17A,22) Requests for access to records
- 19.9(17A,22) Disclosures without consent of the subject
- 19.10(17A,22) Routine use
- 19.11(17A,22) Consensual disclosure of confidential records
- 19.12(17A,22) Release to subject
- 19.13(17A,22) Availability of records
- 19.14 Reserved
- 19.15(17A,22) Other groups of records
- 19.16(17A,22) Data processing systems
- 19.17(17A,22) Applicability

CHAPTER 20

Reserved

CHAPTER 21

THE SERVICE OF CASE MANAGEMENT

- 21.1(231) Authority
- 21.2(231) Purpose
- 21.3(231) General requirements for providers of case management services
- 21.4(231) Case management service activities

CHAPTER 22
OFFICE OF PUBLIC GUARDIAN

- 22.1(231E,633) Purpose
- 22.2(231E,633) Definitions
- 22.3(231E,633) Public guardian qualifications
- 22.4(231E,633) Ethics and standards of practice
- 22.5(231E,633) Staffing ratio
- 22.6(231E,633) Conflict of interest
- 22.7(231E,633) Individuals eligible for services
- 22.8(231E,633) Application and intake process—guardianship, conservatorship, and representative payee
- 22.9(231E,633) Case records
- 22.10(231E,633) Confidentiality
- 22.11(231E,633) Termination or limitation
- 22.12(231E,633) Service fees
- 22.13(231E,633) Fee schedule
- 22.14(231E,633) Denial of services—appeal
- 22.15(231E,633) Contesting the actions of a guardian or conservator
- 22.16(231E,633) Severability

CHAPTER 23
AGING AND DISABILITY RESOURCE CENTER

- 23.1(231) Authority
- 23.2(231) Aging and disability resource centers
- 23.3(231) ADRC
- 23.4(231) Population served
- 23.5(231) Options counselors

CHAPTER 19
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 5/18/88, see 321—2.6(249D)]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 19]

The department on aging hereby adopts, with the following exceptions and amendments, rules of the Governor’s Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

17—19.1(17A,22) Definitions. As used in this chapter:

“*Agency*” in these rules means the department on aging.

“*Custodian*” means the department director and the division administrators.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.3(17A,22) Requests for access to records.

19.3(1) Location of record. In lieu of the words “(insert agency head)”, insert “director of the department on aging”. In lieu of the words “(insert agency name and address)”, insert “the Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025”.

19.3(2) Office hours. In lieu of the words “(insert customary office hours and, if the agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)”, insert “8 a.m. to 4:30 p.m. Monday through Friday”.

19.3(7) Fees.

c. Search and supervisory fees. In lieu of the words “(specify time period)”, insert “one-half hour”. In lieu of the parenthetical sentence at the end of the paragraph, insert “If the request requires research or if the record or records cannot readily be retrieved by the office, the requester will be advised of this fact. In addition, all costs for retrieval and copying of information stored in electronic storage systems may be charged to the requester.”

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.9(17A,22) Disclosures without consent of the subject.

19.9(1) Disclosure. Open records are frequently disclosed without consent of the subject.

19.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use, as defined in rule 17—19.10(17A,22), or in the notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record; provided, that, the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of an individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.10(17A,22) Routine use.

19.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It

includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

19.10(2) Routine uses. To the extent allowed by law, the following uses are considered to be routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's initiative determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

g. Any disclosure to AAAs on matters pertinent to the performance of their responsibilities.

h. Any disclosure to care review committees on matters pertinent to the performance of their responsibilities.

i. Any disclosure to agencies and organizations which advocate for older persons and volunteer time and effort to programs so that program goals can be achieved.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.11(17A,22) Consensual disclosure of confidential records.

19.11(1) Consent to disclosure by a subject individual. To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 17—19.6(17A,22).

19.11(2) Complaints to public officials. A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency, to the extent permitted by law, may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

19.11(3) Obtaining information from a third party. The agency is required to obtain information to resolve long-term care complaints received by the ombudsman, to provide information on legal assistance issues and to determine that eligibility requirements are met for care review committee members. Requests made to third parties for this information may involve the release of confidential information about individuals. Except as provided in rule 17—19.10(17A,22), the agency may make these requests only when the individual has authorized the release in writing.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.12(17A,22) Release to subject.

19.12(1) Subjects of confidential records. The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 17—19.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by Iowa Code section 22.7(5).

d. As otherwise authorized by law.

19.12(2) Multiple subjects. Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.13(17A,22) Availability of records.

19.13(1) Open records. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

19.13(2) Confidential records. The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Sealed bids received prior to the time set for public opening of bids, Iowa Code section 72.3.
b. Tax records made available to the agency under Iowa Code sections 422.20 and 422.72.
c. Any other record made confidential by law.
d. Records which are part of the long-term care resident's advocate/ombudsman complaint system under Iowa Code section 231.43.

e. Any records which are client information for the Senior Community Service Employment Program. Pursuant to authority provided in Iowa Code section 231.51, the department administers the SCSEP program, a federally funded employment program. Federal law requires that personal information about participants be kept confidential under 20 CFR 674.203b-3(1985). The department has determined that the U.S. Department of Labor would not provide funding for the SCSEP program unless the confidentiality of participants is maintained. In order, therefore, to prevent the denial of these funds, the information will be kept confidential and any requirements to the contrary in Iowa Code chapter 22 must be waived as provided in Iowa Code section 22.9.

f. Records which are exempt from disclosure under Iowa Code section 22.7.

g. Minutes of closed meetings of a government body, Iowa Code section 21.5(4).

h. Identifying details of final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."

i. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law;
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency, as indicated in Iowa Code sections 17A.2 and 17A.3.

j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

19.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 17—19.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 19.4(3).

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.14(17A,22) Personally identifiable information—aging programs. Transferred to 441—9.18(17A,22), IAC Supplement 6/28/23.

17—19.15(17A,22) Other groups of records.

19.15(1) *Other records.* This rule describes groups of records maintained by the agency other than record systems as defined in rule 17—19.1(17A,22). These records are routinely available to the public. However, the agency files of these records may contain confidential information, as discussed in rule 17—19.13(17A,22). The records listed may contain information about individuals. Some records are stored both on paper and in an automated data processing system unless otherwise noted.

19.15(2) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

19.15(3) *Commission and advisory council records.* Agendas, minutes, and materials presented to the commission for the department on aging and the state advisory council are available from the office of the department on aging, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Commission and advisory council records contain information about participants in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

19.15(4) *Publications.* Publications such as news releases, annual reports, project reports and agency newsletters are available from the office of the department on aging.

19.15(5) *Other publications.* Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of councils or committees. This information is not retrieved by individual identifier, and is not stored on an automated data processing system.

19.15(6) *Statistical reports.* Periodic reports of units of service for various agency programs are available from the department on aging. Statistical reports do not contain personally identifiable information.

19.15(7) *Grants.* Records on persons receiving grants for activities funded pursuant to state or federal laws are available through the office specified in subrule 19.2(1). These records may contain information about employees of a grantee. This information is not retrieved by individual identifier, and is not stored in an automated data processing system. The information is collected under the authority of Iowa Code chapter 231.

19.15(8) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to subrule 19.13(2). These records may contain information about individuals collected under the authority of Iowa Code chapter 231.

19.15(9) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

19.15(10) *Policy manuals.* The agency employees' and other procedures manuals, containing the policies and procedures for programs administered by the agency, are available in the department specified in rule 17—19.1(17A,22). Policy manuals do not contain information about individuals. Some of this information may be confidential under Iowa Code section 17A.2(7) "f" or other applicable provisions of law.

19.15(11) *Iowa aging memos and directives.* The agency provides guidance and instructions to its grantees through Iowa aging memorandums and Iowa aging directives. Copies of these documents are available from the department. Iowa aging memorandums and Iowa aging directives may contain information about individuals under the authority of Iowa Code chapter 231.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.16(17A,22) *Data processing systems.* All data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—19.17(17A,22) *Applicability.* This chapter does not:

1. Require the agency to index or retrieve records which contain information about individuals by that person's name or other personal identifier.
2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.
3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency.
4. Apply to grantees, including local governments or subdivisions thereof, administering state-funded programs, unless otherwise provided by law or agreement.
5. Make available records compiled by the agency in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency.

[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code sections 17A.3(1) "d," 22.11, 217.6 and 217.30 and Iowa Code chapters 228 and 231.

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]¹

[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

[Filed Emergency ARC 8489B, IAB 1/27/10, effective 1/7/10]

[Editorial change: IAC Supplement 6/28/23]

¹ Effective date of Ch 2 delayed 70 days by the Administrative Rules Review Committee.

EDUCATION DEPARTMENT[281]

Created by 1986 Iowa Acts, chapter 1245, section 1401.
 Prior to 9/7/88, see Public Instruction Department[670]
 (Replacement pages for 9/7/88 published in 9/21/88 IAC)

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) Rule-making Internet site
- 2.20(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 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)	Submission of waiver information
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
- 6.23(256,17A) Additional requirements for specific programs

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
FLEXIBLE STUDENT AND SCHOOL SUPPORT PROGRAM PROCESS

12.9(256) Flexible student and school support program

DIVISION X
INDEPENDENT ACCREDITING AGENCIES

12.10(256) Independent accrediting agencies

DIVISION XI
HIGH-QUALITY STANDARDS FOR COMPUTER SCIENCE

12.11(256) High-quality standards for computer science

CHAPTER 13

Reserved

CHAPTER 14
SCHOOL HEALTH SERVICES

DIVISION I
IN GENERAL

14.1(256) Medication administration

14.2(256) Special health services

14.3(256) School district and accredited nonpublic school stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer voluntary supply

14.4(279) Suicide prevention, identification of adverse childhood experiences, and strategies to mitigate toxic stress response

14.5(256,280) Severability

DIVISION II

COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

14.6(279)	Purpose and objectives: comprehensive healthy and safe learning environments
14.7(279)	Definitions
14.8(279)	Classroom clears
14.9(279)	Required parent/guardian notifications and responses
14.10(279)	Documentation and reporting
14.11(256)	Crisis response
14.12(256)	Prevention of classroom behaviors that present an imminent threat
14.13(256)	Therapeutic classroom
14.14(256)	Therapeutic classroom—claims
14.15(256,279,280)	Required training
14.16(256)	Department responsibilities, evidence-based standards, guidelines and expectations
14.17 to 14.19	Reserved

DIVISION III

SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

14.20(280A)	Purpose and objectives: contracted behavioral health screening and telehealth
14.21(256B,280A)	Definitions
14.22(280A)	Behavioral health screenings in school settings
14.23(280A)	Establishment of provider-patient relationship for telehealth in school setting
14.24(280A)	Behavioral health services provided via telehealth in a school setting

CHAPTER 15

ONLINE AND VIRTUAL LEARNING

15.1(256)	Purpose
15.2(256)	Definitions
15.3(256)	Telecommunications for instruction
15.4	Reserved
15.5(256)	Online learning—private providers
15.6(256)	Online learning provided by area education agencies
15.7(256)	Online learning program provided by a school district—online schools
15.8(256)	Online learning provided by a school district or nonpublic school—courses
15.9(256)	Open enrollment
15.10(256)	Online learning—access by students receiving competent private instruction
15.11(256,256B)	Online learning—students with disabilities
15.12(256)	Department general supervision of telecommunications and online learning

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 and 17.5 Reserved
- 17.6(282) Restrictions to open enrollment requests
- 17.7(282) Open enrollment for kindergarten or certain prekindergarten programs
- 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 and 17.13 Reserved
- 17.14(282) Court-ordered desegregation plans
- 17.15(282) Open enrollment and online coursework

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

CHAPTER 19
CHARTER SCHOOLS

- 19.1(256E) Purpose
- 19.2(256E) Establishment of charter schools
- 19.3(256E) Purpose of a charter school
- 19.4(256E) Definitions
- 19.5(256E) Department duty to monitor
- 19.6(256E) General application provisions
- 19.7(256E) School board-state board model
- 19.8(256E) Founding group-state board model
- 19.9(256E) Charter school contract
- 19.10(256E) Performance framework
- 19.11(256E) General operating powers and duties
- 19.12(256E) Funding
- 19.13(256E) Oversight—corrective action—contract renewal—revocation
- 19.14(256E) Procedures for charter school closure—student enrollment
- 19.15(256E) Reports
- 19.16(256E) Operation of existing charter schools

CHAPTER 20
STUDENTS FIRST ACT—EDUCATION SAVINGS ACCOUNTS

- 20.1(257) Definitions
- 20.2(257) Eligible students
- 20.3(257) Application process
- 20.4(257) Administration, accountability, monitoring, and enforcement

TITLE III
COMMUNITY COLLEGES

CHAPTER 21
COMMUNITY COLLEGES

DIVISION I
APPROVAL STANDARDS

21.1(260C)	Definitions
21.2(260C)	Administration
21.3(260C)	Associate of arts and associate of science transfer major programs
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(321J)	Advisory committee

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 Reserved
22.13(261E) Accredited nonpublic school concurrent enrollment option

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(261E) Waivers for certain regional academies

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

22.28(261E) Internet-based coursework
22.29(261E) ICN-based coursework
22.30 and 22.31 Reserved

DIVISION IX
PROJECT LEAD THE WAY

22.32(261E) Project lead the way

DIVISION X
SUMMER COLLEGE CREDIT PROGRAM

22.33(261E) Summer college credit program

CHAPTER 23
ADULT EDUCATION AND LITERACY PROGRAMS

23.1(260C) Definitions
23.2(260C) State planning
23.3(260C) Program administration
23.4(260C) Career pathways
23.5(260C) Student eligibility
23.6(260C) Qualification of staff
23.7(260C) High-quality professional development
23.8(260C) Performance and accountability

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
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT PROGRAM;
GAP TUITION ASSISTANCE PROGRAM

DIVISION I
GENERAL PROVISIONS

25.1(260H,260I) Scope
25.2(260H,260I) Definitions
25.3 to 25.10 Reserved

DIVISION II
PATHWAYS FOR ACADEMIC CAREER AND EMPLOYMENT (PACE) PROGRAM

25.11(260H) Purpose
25.12(260H) Target populations
25.13(260H) Eligibility criteria for projects
25.14(260H) Program component requirements
25.15(260H) Pipeline program
25.16(260H) Career pathways and bridge curriculum development program
25.17(260H) Pathway navigators
25.18(260H) Regional industry sector partnerships
25.19 Reserved

DIVISION III
GAP TUITION ASSISTANCE PROGRAM

25.20(260I) Purpose
25.21(260I) Applicants for tuition assistance
25.22(260I) Eligible costs
25.23(260I) Eligible certificate programs
25.24(260I) Initial assessment

- 25.25(260I) Program interview
- 25.26(260I) Participation requirements
- 25.27(260I) Oversight
- 25.28(260I) Redistribution of funds

TITLE IV
DRIVER AND SAFETY EDUCATION

CHAPTER 26
Reserved

CHAPTER 27

WORKFORCE TRAINING AND ECONOMIC DEVELOPMENT FUNDS

- 27.1(260C) Purpose
- 27.2(260C) Definitions
- 27.3(260C) Funds allocation
- 27.4(260C) Community college workforce and economic development fund plans and progress reports
- 27.5(260C) Use of funds
- 27.6(260C) Prior approval
- 27.7(260C) Annual plan and progress report approval
- 27.8(260C) Options upon default or noncompliance

CHAPTERS 28 to 30
Reserved

TITLE V
NONTRADITIONAL STUDENTS

CHAPTER 31

PRIVATE INSTRUCTION AND DUAL ENROLLMENT

- 31.1(299,299A) Purpose and definitions
- 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
- 31.11(299,299A) Independent private instruction
- 31.12(299,299A) Miscellaneous provisions

CHAPTER 32

HIGH SCHOOL EQUIVALENCY DIPLOMA

- 32.1(259A) Purpose
- 32.2(259A) Definitions
- 32.3(259A) Eligibility to participate
- 32.4(259A) By whom administered
- 32.5(259A) Diploma, transcript, verification fees
- 32.6(259A) Application, course, and testing fees
- 32.7(259A) High school equivalency diploma program based on a department-approved test
- 32.8(259A) High school equivalency diploma program based on attainment of high school credits

- 32.9(259A) High school equivalency diploma program based on postsecondary degree
 32.10(259A) High school equivalency diploma program based on foreign postsecondary degree

CHAPTER 33

EDUCATING HOMELESS CHILDREN AND YOUTH

- 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

EDUCATIONAL STANDARDS AND PROGRAM REQUIREMENTS FOR CHILDREN'S
RESIDENTIAL FACILITIES

- 35.1(282) Scope
 35.2(282) Intent
 35.3(282) Definitions
 35.4(282) Establishing an appropriate educational program
 35.5(282) Display of notices; fees
 35.6(282) Provision of appropriate educational services
 35.7(282) Reporting

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 Reserved
- 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 Reserved
- 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 41.159 Reserved
- 41.160(256B,34CFR300) Participation in assessments
- 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(256B,34CFR300) Family support mentoring program
- 41.330 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 Reserved
- 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 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(256B,34CFR300) Determining significant disproportionality
- 41.648 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 mediation 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
41.1102(256B,34CFR300)	Rule of construction

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 OTHER THAN FOR ROUTES

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)	Driver authorization
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	Reserved
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 body and chassis specifications
44.4(285)	Construction of vehicles for children with mobility challenges
44.5(285)	Type III vehicles
44.6(285)	Repair, replacement of school bus body and chassis components following original equipment manufacture

CHAPTER 45
Reserved

TITLE IX
VOCATIONAL EDUCATION

CHAPTER 46
CAREER AND TECHNICAL EDUCATION

46.1(258)	Federal Act accepted
46.2(258)	Definitions

46.3(258)	State board for career and technical education
46.4(258)	Career and technical education service areas
46.5(258)	Standards for career and technical education
46.6(258)	Career and technical education program approval and review
46.7(258)	Accreditation standards not met
46.8(258)	Advisory council
46.9(258)	Distribution of career and technical education funds
46.10(258)	Regional career and technical education planning partnerships
46.11(258)	Career academies
46.12(258)	Regional centers
46.13(423F)	Career academy incentive fund

CHAPTER 47

Reserved

CHAPTER 48

WORK-BASED LEARNING

DIVISION I

STATEWIDE WORK-BASED LEARNING INTERMEDIARY NETWORK

48.1(256)	Purpose
48.2(256)	Definitions
48.3(256)	Statewide work-based learning intermediary network
48.4(256)	Regional work-based learning intermediary network

DIVISION II

FUTURE READY IOWA STATE-RECOGNIZED WORK-BASED LEARNING PROGRAMS

48.5(256)	Program established
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CHAPTER 49

INDIVIDUAL CAREER AND ACADEMIC PLAN

49.1(279)	Purpose
49.2(279)	Definitions
49.3(279)	Individualized career and academic plan
49.4(279)	Essential components
49.5(279)	District plan
49.6(279)	Career information and decision-making systems
49.7(279)	Compliance

CHAPTER 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

56.1(259)	Nature and responsibility of division
56.2(259)	Nondiscrimination
56.3(259)	Definitions
56.4(259)	Referral and application for services
56.5(259)	Eligibility for vocational rehabilitation services
56.6(259)	Other eligibility and service determinations
56.7(259)	Purchasing principles for individual-specific purposes
56.8(259)	Review, mediation and appeal processes
56.9(259)	Case record
56.10(259)	Personally identifiable information
56.11(259)	Other groups of records routinely available for public inspection
56.12(259)	State rehabilitation council
56.13(259)	Iowa self-employment program: purpose
56.14(259)	Program requirements
56.15(259)	Application procedure
56.16(259)	Award of technical assistance funds
56.17(259)	Business plan feasibility study procedure
56.18(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 WHO ARE ENGLISH LEARNERS

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

CHAPTER 61
IOWA READING RESEARCH CENTER

61.1(256) Establishment
61.2(256) Purpose
61.3(256) Intensive summer literacy program
61.4(256) First efforts of the center
61.5(256) Nature of the center's operation
61.6(256) Nature of the center's products
61.7(256) Governance and leadership of the center
61.8(256) Financing of the center
61.9(256) Annual report

CHAPTER 62

STATE STANDARDS FOR PROGRESSION IN READING

62.1(256,279)	Purpose
62.2(256,279)	Assessment of reading proficiency
62.3(256,279)	Tools for evaluating and reevaluating reading proficiency
62.4(256,279)	Identification of a student as being persistently at risk in reading
62.5	Reserved
62.6(256,279)	Successful progression for early readers
62.7 and 62.8	Reserved
62.9(256,279)	Ensuring continuous improvement in reading proficiency
62.10(256,279)	Miscellaneous provisions

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	Reserved

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

PROGRAMS FOR AT-RISK EARLY ELEMENTARY STUDENTS

65.1(279)	Purpose
65.2(279)	Definitions
65.3(279)	Eligibility identification procedures
65.4(279)	Award allocation procedure
65.5(279)	Award acceptance process
65.6(279)	Awardee responsibilities
65.7(279)	Allowable expenditures
65.8(279)	Evaluation
65.9(279)	Budget revisions
65.10(279)	Termination for convenience
65.11(279)	Termination for cause
65.12(279)	Responsibility of awardee at termination
65.13(279)	Appeals from terminations

CHAPTER 66

Reserved

CHAPTER 67

EDUCATIONAL SUPPORT PROGRAMS FOR PARENTS OF CHILDREN AGED BIRTH THROUGH FIVE YEARS WHO ARE AT RISK

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 AND INNOVATION ZONE SCHOOLS

DIVISION I
GENERAL PROVISIONS

- 68.1(256F,83GA,SF2033) Purpose
- 68.2(256F,83GA,SF2033) Definitions

DIVISION II
CHARTER SCHOOLS

- 68.3(256F,83GA,SF2033) Application to a school board
- 68.4(256F,83GA,SF2033) Review process
- 68.5(256F,83GA,SF2033) Ongoing review by department
- 68.6(256F,83GA,SF2033) Renewal of charter
- 68.7(256F,83GA,SF2033) Revocation of charter
- 68.8(256F) Transition—operation of existing charter schools
- 68.9 and 68.10 Reserved

DIVISION III
INNOVATION ZONE SCHOOLS

- 68.11(256F,83GA,SF2033) Application process
- 68.12(256F,83GA,SF2033) Review process
- 68.13(256F,83GA,SF2033) Ongoing review by department
- 68.14(256F,83GA,SF2033) Renewal of contract
- 68.15(256F,83GA,SF2033) Revocation of contract

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

TEACHER INTERN PREPARATION PROGRAM STANDARDS

- 77.8(256) Governance and resources standard
- 77.9(256) Faculty standard
- 77.10(256) Program of study standard
- 77.11(256) Assessment standard

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 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 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) Application; 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 resource standards
- 80.10(272) Diversity standards
- 80.11(272) Faculty standards
- 80.12(272) Program assessment and evaluation standards
- 80.13(272) Clinical practice standards

CHAPTER 81
 STANDARDS FOR SCHOOL BUSINESS OFFICIAL PREPARATION PROGRAMS

- 81.1(256) Definitions
- 81.2(256) Institutions eligible to provide a school business official preparation program
- 81.3(256) Approval of programs
- 81.4(256) Governance and resources standard
- 81.5(256) Instructor standard
- 81.6(256) Assessment system and institution evaluation standard
- 81.7(256) School business official candidate knowledge and skills standards and criteria
- 81.8(256) School business official mentoring program
- 81.9(256) Periodic reports
- 81.10(256) Reevaluation of school business official preparation programs
- 81.11(256) Approval of program changes

CHAPTER 82
 STANDARDS FOR SCHOOL ADMINISTRATION MANAGER PROGRAMS

- 82.1(272) Definitions
- 82.2(272) Organizations eligible to provide a school administration manager training program
- 82.3(272) Approval of training programs
- 82.4(272) Governance and resources standard
- 82.5(272) Trainer and coach standard
- 82.6(272) Assessment system and organization evaluation standard
- 82.7(272) School administration manager knowledge and skills standards and criteria
- 82.8(272) Periodic reports
- 82.9(272) Reevaluation of school administration manager programs
- 82.10(272) Approval of program changes and flexibility of programs
- 82.11(272) Fees

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 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
Reserved

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 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
97.8(261E)	Concurrent enrollment program contracts between accredited nonpublic schools and community colleges

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)	English learner weighting
98.17(256B,257)	Special education weighting
98.18(257)	At-risk program, alternative program or alternative school, and potential or returning dropout prevention program formula supplementary weighting
98.19(257)	Reorganization incentive weighting
98.20(257)	Gifted and talented program
98.21(257)	At-risk program, alternative program or alternative school, and potential or returning dropout prevention program—modified supplemental amount
98.22(257)	Use of the unexpended general fund balance
98.23(257)	Early intervention supplement
98.24(257,284)	Teacher salary supplement
98.25(257,284)	Teacher leadership supplement

- 98.26(257,284) Educator quality professional development, also known as professional development supplement
- 98.27(257,298A) Flexibility account
- 98.28 to 98.39 Reserved

DIVISION III
APPROPRIATE USE OF GRANTS IN AID

- 98.40(256,257,298A) Grants in aid
- 98.41 Reserved
- 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(279) Early literacy
- 98.46 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(298A) Entrepreneurial education fund
- 98.72(256B,257,298A) Special education instruction fund
- 98.73(282,298A) Juvenile home program instruction fund
- 98.74(283A,298A) School nutrition fund
- 98.75(279,298A) Child care and before- and after-school programs fund
- 98.76(298A) Regular education preschool fund
- 98.77(298A) Student construction fund
- 98.78(298A) Other enterprise funds
- 98.79 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) Custodial funds
- 98.102 to 98.110 Reserved
- 98.111(24,29C,257,298A) Emergency levy fund
- 98.112(275) Equalization levy fund

CHAPTER 99
BUSINESS PROCEDURES AND DEADLINES

- 99.1(257) Definitions
- 99.2(256,257,285,291) Submission deadlines
- 99.3(257) Good cause for late submission
- 99.4(24,256,257,291) Budgets, accounting and reporting

CHAPTER 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, PHYSICAL RESTRAINT, SECLUSION, AND OTHER PHYSICAL
CONTACT WITH STUDENTS

103.1(256B,280)	Purpose and objectives
103.2(256B,280)	Definitions
103.3(256B,280)	Ban on corporal punishment and prone and mechanical restraints
103.4(256B,280)	Activities that are not considered corporal punishment
103.5(256B,280)	Use of reasonable and necessary force
103.6(256B,280)	Reasonable force
103.7(256B,280)	Reasonable and necessary force—use of physical restraint or seclusion
103.8(256B,280)	Training, documentation, debriefing, and reporting requirements
103.9(256B,280)	Seclusion room requirements
103.10(256B,280)	Department responsibilities
103.11(256B,280)	Other provisions

CHAPTERS 104 to 119

Reserved

TITLE XVIII
*EARLY CHILDHOOD*CHAPTER 120
EARLY ACCESS INTEGRATED SYSTEM OF
EARLY INTERVENTION SERVICESDIVISION I
PURPOSE AND APPLICABILITY

- 120.1(34CFR303) Purposes and outcomes of the Early ACCESS Integrated System of Early Intervention Services
- 120.2(34CFR303) Applicability of this chapter
- 120.3(34CFR303) Applicable federal regulations

DIVISION II
DEFINITIONS

- 120.4(34CFR303) Act
- 120.5(34CFR303) At-risk infant or toddler
- 120.6(34CFR303) Child
- 120.7(34CFR303) Consent
- 120.8(34CFR303) Council
- 120.9(34CFR303) Day
- 120.10(34CFR303) Developmental delay
- 120.11(34CFR303) Early intervention service program
- 120.12(34CFR303) Early intervention service provider
- 120.13(34CFR303) Early intervention services
- 120.14(34CFR303) Elementary school
- 120.15(34CFR303) Free appropriate public education
- 120.16(34CFR303) Health services
- 120.17(34CFR303) Homeless children
- 120.18(34CFR303) Include; including
- 120.19(34CFR303) Indian; Indian tribe
- 120.20(34CFR303) Individualized family service plan
- 120.21(34CFR303) Infant or toddler with a disability
- 120.22(34CFR303) Lead agency
- 120.23(34CFR303) Local educational agency
- 120.24(34CFR303) Multidisciplinary
- 120.25(34CFR303) Native language
- 120.26(34CFR303) Natural environments
- 120.27(34CFR303) Parent
- 120.28(34CFR303) Parent training and information center
- 120.29(34CFR303) Personally identifiable information
- 120.30(34CFR303) Public agency
- 120.31(34CFR303) Qualified personnel
- 120.32(34CFR303) Scientifically based research
- 120.33(34CFR303) Secretary
- 120.34(34CFR303) Service coordination services (case management)
- 120.35(34CFR303) State
- 120.36(34CFR303) State educational agency
- 120.37(34CFR303) Ward of the state
- 120.38(34CFR303) Other definitions used in this chapter
- 120.39 to 120.99 Reserved

DIVISION III
STATE ELIGIBILITY FOR A GRANT AND REQUIREMENTS
FOR A STATEWIDE SYSTEM: GENERAL AUTHORITY AND ELIGIBILITY

120.100(34CFR303)	General authority
120.101(34CFR303)	State eligibility—requirements for a grant under Part C of the Act
120.102(34CFR303)	State conformity with Part C of the Act
120.103 and 120.104	Reserved
120.105(34CFR303)	Positive efforts to employ and advance qualified individuals with disabilities
120.106 to 120.109	Reserved
120.110(34CFR303)	Minimum components of a statewide system
120.111(34CFR303)	State definition of developmental delay
120.112(34CFR303)	Availability of early intervention services
120.113(34CFR303)	Evaluation, assessment, and nondiscriminatory procedures
120.114(34CFR303)	Individualized family service plan (IFSP)
120.115(34CFR303)	Comprehensive child find system
120.116(34CFR303)	Public awareness program
120.117(34CFR303)	Central directory
120.118(34CFR303)	Comprehensive system of personnel development (CSPD)
120.119(34CFR303)	Personnel standards
120.120(34CFR303)	Lead agency role in supervision, monitoring, funding, interagency coordination, and other responsibilities
120.121(34CFR303)	Policy for contracting or otherwise arranging for services
120.122(34CFR303)	Reimbursement procedures
120.123(34CFR303)	Procedural safeguards
120.124(34CFR303)	Data collection
120.125(34CFR303)	State interagency coordinating council
120.126(34CFR303)	Early intervention services in natural environments
120.127 to 120.199	Reserved

DIVISION IV
STATE APPLICATION AND ASSURANCES

120.200(34CFR303)	State application and assurances
120.201(34CFR303)	Designation of lead agency
120.202(34CFR303)	Certification regarding financial responsibility
120.203(34CFR303)	Statewide system and description of services
120.204	Reserved
120.205(34CFR303)	Description of use of funds
120.206(34CFR303)	Referral policies for specific children
120.207(34CFR303)	Availability of resources
120.208(34CFR303)	Public participation policies and procedures
120.209(34CFR303)	Transition to preschool and other programs
120.210(34CFR303)	Coordination with Head Start and Early Head Start, early education, and child care programs
120.211	Reserved
120.212(34CFR303)	Additional information and assurances
120.213 to 120.219	Reserved
120.220(34CFR303)	Assurances satisfactory to the Secretary
120.221(34CFR303)	Expenditure of funds
120.222(34CFR303)	Payor of last resort
120.223(34CFR303)	Control of funds and property
120.224(34CFR303)	Reports and records
120.225(34CFR303)	Prohibition against supplanting; indirect costs
120.226(34CFR303)	Fiscal control

120.227(34CFR303)	Traditionally underserved groups
120.228(34CFR303)	Subsequent state application and modifications of application
120.229 to 120.299	Reserved

DIVISION V

CHILD FIND; EVALUATIONS AND ASSESSMENTS; INDIVIDUALIZED FAMILY SERVICE PLANS

120.300(34CFR303)	General
120.301(34CFR303)	Public awareness program—information for parents
120.302(34CFR303)	Comprehensive child find system
120.303(34CFR303)	Referral procedures
120.304 to 120.309	Reserved
120.310(34CFR303)	Post-referral timeline (45 calendar days)
120.311 to 120.319	Reserved
120.320(34CFR303)	Screening procedures
120.321(34CFR303)	Evaluation of the child and assessment of the child and family
120.322(34CFR303)	Determination that a child is not eligible
120.323 to 120.339	Reserved
120.340(34CFR303)	Individualized family service plan—general
120.341	Reserved
120.342(34CFR303)	Procedures for IFSP development, review, and evaluation
120.343(34CFR303)	IFSP team meeting and periodic review
120.344(34CFR303)	Content of an IFSP
120.345(34CFR303)	Interim IFSPs—provision of services before evaluations and assessments are completed
120.346(34CFR303)	Responsibility and accountability
120.347(256B,34CFR303)	Family support mentoring program
120.348 to 120.399	Reserved

DIVISION VI

PROCEDURAL SAFEGUARDS

120.400(34CFR303)	General responsibility of lead agency for procedural safeguards
120.401(34CFR303)	Confidentiality and opportunity to examine records
120.402(34CFR303)	Confidentiality
120.403(34CFR303)	Definitions
120.404(34CFR303)	Notice to parents
120.405(34CFR303)	Access rights
120.406(34CFR303)	Record of access
120.407(34CFR303)	Records on more than one child
120.408(34CFR303)	List of types and locations of information
120.409(34CFR303)	Fees for records
120.410(34CFR303)	Amendment of records at a parent's request
120.411(34CFR303)	Opportunity for a hearing
120.412(34CFR303)	Result of hearing
120.413(34CFR303)	Hearing procedures
120.414(34CFR303)	Consent prior to disclosure or use
120.415(34CFR303)	Safeguards
120.416(34CFR303)	Destruction of information
120.417(34CFR303)	Enforcement
120.418 and 120.419	Reserved
120.420(34CFR303)	Parental consent and ability to decline services
120.421(34CFR303)	Prior written notice and procedural safeguards notice
120.422(34CFR303)	Surrogate parents
120.423 to 120.429	Reserved
120.430(34CFR303)	State dispute resolution options

120.431(34CFR303)	Mediation
120.432(34CFR303)	Adoption of state complaint procedures
120.433(34CFR303)	Minimum state complaint procedures
120.434(34CFR303)	Filing a complaint
120.435(34CFR303)	Appointment of an administrative law judge
120.436(34CFR303)	Parental rights in due process hearing proceedings
120.437(34CFR303)	Convenience of hearings and timelines
120.438(34CFR303)	Civil action
120.439(34CFR303)	Limitation of actions
120.440(34CFR303)	Rule of construction
120.441(34CFR303)	Attorney fees
120.442 to 120.448	Reserved
120.449(34CFR303)	State enforcement mechanisms
120.450 to 120.499	Reserved

DIVISION VII

USE OF FUNDS; PAYOR OF LAST RESORT

120.500(34CFR303)	Use of funds, payor of last resort, and system of payments
120.501(34CFR303)	Permissive use of funds by the department
120.502 to 120.509	Reserved
120.510(34CFR303)	Payor of last resort
120.511(34CFR303)	Methods to ensure the provision of, and financial responsibility for, Early ACCESS services
120.512 to 120.519	Reserved
120.520(34CFR303)	Policies related to use of public benefits or insurance or private insurance to pay for Early ACCESS services
120.521(34CFR303)	System of payments and fees
120.522 to 120.599	Reserved

DIVISION VIII

STATE INTERAGENCY COORDINATING COUNCIL

120.600(34CFR303)	Establishment of council
120.601(34CFR303)	Composition
120.602(34CFR303)	Meetings
120.603(34CFR303)	Use of funds by the council
120.604(34CFR303)	Functions of the council; required duties
120.605(34CFR303)	Authorized activities by the council
120.606 to 120.699	Reserved

DIVISION IX

FEDERAL AND STATE MONITORING AND ENFORCEMENT;
REPORTING; AND ALLOCATION OF FUNDS

120.700(34CFR303)	State monitoring and enforcement
120.701(34CFR303)	State performance plans and data collection
120.702(34CFR303)	State use of targets and reporting
120.703(34CFR303)	Department review and determination regarding EIS program performance
120.704(34CFR303)	Enforcement
120.705(34CFR303)	Withholding funds
120.706(34CFR303)	Public attention
120.707	Reserved
120.708(34CFR303)	State enforcement
120.709(34CFR303)	State consideration of other state or federal laws
120.710 to 120.719	Reserved
120.720(34CFR303)	Data requirements—general
120.721(34CFR303)	Annual report of children served—report requirement

120.722(34CFR303)	Data reporting
120.723(34CFR303)	Annual report of children served—certification
120.724(34CFR303)	Annual report of children served—other responsibilities of the department
120.725 to 120.800	Reserved

DIVISION X
OTHER PROVISIONS

120.801(34CFR303)	Early ACCESS system—state level
120.802(34CFR303)	Interagency service planning
120.803(34CFR303)	System-level disputes
120.804(34CFR303)	Early ACCESS system—regional and community levels
120.805(34CFR303)	Provision of year-round services
120.806(34CFR303)	Evaluation and improvement
120.807(34CFR303)	Research
120.808(34CFR303)	Records and reports
120.809(34CFR303)	Information for department
120.810(34CFR303)	Public information
120.811(34CFR303)	Dispute resolution: practice before mediators and administrative law judges
120.812(34CFR303)	References to federal law
120.813(34CFR303)	Severability
120.814(34CFR303)	Rule of construction

CHAPTER 14
SCHOOL HEALTH SERVICES

DIVISION I
IN GENERAL

281—14.1(256) Medication administration. Each school district, area education agency, and school shall establish medication administration policy and procedures, which include the following:

14.1(1) A statement on administration of prescription and nonprescription medication.

14.1(2) A statement on an individual health plan pursuant to rule 281—14.2(256) when administration requires ongoing professional health judgment.

14.1(3) A statement that authorized persons administering medication shall include licensed health personnel working under the auspices of the school, such as licensed registered nurses, physicians, physician assistants, and persons to whom authorized practitioners have delegated the administration of prescription and nonprescription drugs (who shall have successfully completed a medication administration course). Individuals who have demonstrated competency in administering their own medications may self-administer their medication. Individuals shall self-administer asthma or other airway constricting disease medication, use a bronchodilator canister or bronchodilator canister and spacer, or possess and have use of an epinephrine auto-injector with parent and physician (or physician assistant) consent on file for each school year, without the necessity of demonstrating competency to self-administer these medications. If a student misuses this privilege, it may be withdrawn. For purposes of this chapter, “self-administration” and “medication” mean the same as defined in Iowa Code section 280.16(1).

14.1(4) A provision for a medication administration course provided by the department that is completed every five years with an annual medication administration procedural skills check completed with licensed health personnel. A registered nurse, licensed physician assistant, or licensed pharmacist shall conduct the course. A record of course completion shall be maintained by the school.

14.1(5) A requirement that the individual’s parent provide a signed and dated written statement requesting medication administration at school.

14.1(6) A statement that medication shall be in the original labeled container either as dispensed or in the manufacturer’s container.

14.1(7) A requirement that a written medication administration record shall be on file at the school and shall include:

- a. Date.
- b. Individual’s name.
- c. Prescriber or person authorizing administration.
- d. Medication name and purpose, including the use of a bronchodilator canister or a bronchodilator canister and spacer or the use of an epinephrine auto-injector.
- e. Medication dosage.
- f. Administration time.
- g. Administration method.
- h. Signature and title of the person administering medication.
- i. Any unusual circumstances, actions or omissions.

14.1(8) A statement that medication shall be stored in a secured area unless an alternate provision is documented.

14.1(9) A requirement for a written statement by the individual’s parent or guardian requesting the individual’s co-administration of medication, when competency is demonstrated.

14.1(10) A requirement for emergency protocols for medication-related reactions.

14.1(11) A statement regarding confidentiality of information.

[ARC 3387C, IAB 10/11/17, effective 11/15/17; ARC 7041C, IAB 6/28/23, effective 8/2/23]

281—14.2(256) Special health services. Some individuals need special health services to participate in an educational program. These individuals shall receive special health services along with their educational program.

14.2(1) Definitions. The following definitions shall be used in this rule, unless the context otherwise requires:

“Assignment and delegation” occurs when licensed health personnel, in collaboration with the education team, determine the special health services to be provided and the qualifications of individuals performing the health services. Primary consideration is given to the recommendation of the licensed health personnel. Each designation considers the individual’s special health service. The rationale for the designation is documented.

“Co-administration” is the eligible individual’s participation in the planning, management and implementation of the individual’s special health service and demonstration of proficiency to licensed health personnel.

“Educational program” includes all school curricular programs and activities both on and off school grounds.

“Education team” may include the individual, the individual’s parent, administrator, teacher, licensed health personnel, and others involved in the individual’s educational program. The education team may be the team required by the Individuals with Disabilities Education Act or Section 504 of the Rehabilitation Act of 1973 if the child is eligible under either of those statutes.

“Health assessment” is health data collection, observation, analysis, and interpretation relating to the individual’s educational program.

“Health instruction” is education by licensed health personnel to prepare qualified designated personnel to deliver and perform special health services contained in the eligible individual’s health plan. Documentation of education and periodic updates shall be on file at school.

“Individual health plan” is the confidential, written, preplanned and ongoing special health service in the educational program. It includes assessment, nursing diagnosis, outcomes, planning, interventions, evaluation, student goals, if applicable, and a plan for emergencies to provide direction in managing an individual’s health needs. The plan is updated as needed and at least annually. Licensed health personnel develop this written plan with collaboration from the parent or guardian, individual’s health care provider or education team.

“Licensed health personnel” means a licensed registered nurse, licensed physician, licensed physician assistant, or other licensed health personnel legally authorized to delegate or provide special health services and medications under the auspices of the school.

“Prescriber” means licensed health personnel legally authorized to prescribe special health services and medications.

“Qualified designated personnel” means a person instructed, supervised, and competent in implementing the eligible individual’s health plan.

“Special health services” includes, but is not limited to, services for eligible individuals whose health status (stable or unstable) requires:

1. Interpretation or intervention,
2. Administration of health procedures and health care, or
3. Use of a health device to compensate for the reduction or loss of a body function.

“Supervision” is the assessment, delegation, monitoring, and frequency of evaluation and documentation of special health services by licensed health personnel. Levels of supervision include situations in which:

1. Licensed health personnel are physically present.
2. Licensed health personnel are available at the same site.
3. Licensed health personnel are available on call.

14.2(2) Special health services policy. Each board of a public school or the authorities in charge of an accredited nonpublic school shall, in consultation with licensed health personnel, establish policy and guidelines for the provision of confidential special health services in conformity with this chapter. Such policy and guidelines shall address the following:

a. Licensed health personnel shall provide special health services under the auspices of the school. Duties of the licensed health personnel include:

- (1) Participating as a member of the education team.
- (2) Providing the health assessment.
- (3) Planning, implementing and evaluating the written individual health plan.
- (4) Planning, implementing and evaluating special emergency health services.
- (5) Serving as a liaison and encouraging participation and communication with health service agencies and individuals providing health care.
- (6) Providing health consultation, counseling and instruction with the eligible individual, the individual's parent and the staff in cooperation and conjunction with the prescriber.
- (7) Maintaining a record of special health services. The documentation shall include the eligible individual's name, special health service, prescriber or person authorizing, date and time, signature and title of the person providing the special health service and any unusual circumstances in the provision of such services.
- (8) Reporting unusual circumstances to the parent, school administration, and prescriber.
- (9) Assigning and delegating to, instructing, providing technical assistance to and supervising qualified designated personnel.
- (10) Updating knowledge and skills to meet special health service needs.

b. Prior to the provision of special health services, the following shall be on file:

- (1) A written statement by the prescriber detailing the specific method and schedule of the special health service, when indicated.
- (2) A written statement by the individual's parent requesting the provision of the special health service.
- (3) A written report of the preplanning staffing or meeting of the education team.
- (4) A written individual health plan available in the health record and integrated into the IEP or 504 plan, if applicable.

c. Licensed health personnel, in collaboration with the education team, shall determine the special health services to be provided and the qualifications of the individuals performing the special health services. The documented rationale shall include the following:

- (1) Analysis and interpretation of the special health service needs, health status stability, complexity of the service, predictability of the service outcome and risk of improperly performed service.
- (2) Determination that the special health service, task, procedure or function is part of the person's job description.
- (3) Determination of the assignment and delegation based on the individual's needs and qualifications of school personnel performing health services.
- (4) Review of the designated person's competency.
- (5) Determination of initial and ongoing level of supervision, monitoring and evaluation required for safe, quality services.

d. Licensed health personnel shall supervise the special health services, define the level of frequency of supervision and document the supervision.

e. Licensed health personnel shall instruct qualified designated personnel to deliver and perform special health services contained in the individual health plan. Documentation of instruction, written consent of personnel as required in Iowa Code section 280.23 and periodic updates shall be on file at the school.

f. Parents shall provide the usual equipment, supplies, and necessary maintenance of the equipment, unless the school is required to provide the equipment, supplies, and maintenance under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973. The equipment shall be stored in a secure area. The personnel responsible for the equipment shall be designated in the individual health plan. The individual health plan shall designate the role of the school, parents and others in the provision, supply, storage and maintenance of necessary equipment.

14.2(3) Relationship between this rule and other laws and rules. In complying with this rule, for children who are eligible under the Individuals with Disabilities Education Act and 281—Chapter 41 or Section 504 of the Rehabilitation Act of 1973, the school health services must comply with any additional or differing requirements imposed by those laws based on a specific child’s needs.

[ARC 3387C, IAB 10/11/17, effective 11/15/17; ARC 7041C, IAB 6/28/23, effective 8/2/23]

281—14.3(256) School district and accredited nonpublic school stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer voluntary supply.

14.3(1) Definitions. For the purpose of this rule, the following definitions apply:

“Act” means 2015 Iowa Acts, Senate File 462, which amended Iowa Code section 280.16 and created Iowa Code section 280.16A.

“Bronchodilator” means the same as defined in Iowa Code section 280.16(1)“a.”

“Bronchodilator canister” means the same as defined in Iowa Code section 280.16(1)“b.”

“Department” means the department of education.

“Epinephrine auto-injector” means the same as defined in Iowa Code section 280.16(1)“c.”

“Licensed health care professional” means the same as defined in Iowa Code section 280.16(1)“d.”

“Medication administration course” means a course approved or provided by the department that includes safe storage of medication, handling of medication, general principles, procedural aspects, skills demonstration and documentation requirements of safe medication administration in schools.

“Medication error” means the failure to administer an epinephrine auto-injector to a student or individual by proper route, failure to administer the correct dosage, or failure to administer an epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer according to generally accepted standards of practice.

“Medication incident” means accidental injection of an epinephrine auto-injector into a digit of the authorized personnel administering the medication.

“Personnel authorized to administer epinephrine or a bronchodilator” means the same as defined in Iowa Code section 280.16A(1)“e.”

“School building” means each attendance center within a school district or accredited nonpublic school where students or other individuals are present.

“School nurse” means the same as defined in Iowa Code section 280.16A(1)“f.”

“Spacer” means the same as defined in Iowa Code section 280.16A(1)“g.”

14.3(2) Applicability. This rule applies to and permits:

a. A licensed health care professional to prescribe a stock epinephrine auto-injector, a bronchodilator canister, or a bronchodilator canister and spacer in the name of a school district or accredited nonpublic school for use in accordance with the Act and this rule;

b. A pharmacist to dispense a stock supply pursuant to paragraph 14.3(2)“a”; and

c. A school district or accredited nonpublic school to acquire and maintain a stock supply pursuant to paragraphs 14.3(2)“a” and 14.3(2)“b.”

14.3(3) Prescription for stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers. A school district or accredited nonpublic school may obtain a prescription for epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers from a licensed health care professional annually in the name of the school district or accredited nonpublic school for administration to a student or individual who may be experiencing an anaphylactic reaction or may require treatment for respiratory distress, asthma, or other airway constricting disease. The school district or accredited nonpublic school shall maintain the supply of such auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers according to manufacturer instructions. If a school district or accredited nonpublic school obtains a prescription pursuant to the Act and these rules for epinephrine auto-injectors, the school district or accredited nonpublic school shall stock a minimum of one pediatric dose and one adult dose for each school building. A school district or accredited nonpublic school may obtain a prescription for more than the minimum and may maintain a supply in other buildings.

14.3(4) *Authorized personnel and stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer administration.* A school nurse or personnel trained and authorized may provide or administer an epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer from a school supply to a student or individual in circumstances authorized by Iowa Code section 280.16.

a. Pursuant to Iowa Code section 280.23, authorized personnel will submit a signed statement to the school nurse stating that the authorized personnel agree to perform the service of administering a stock epinephrine auto-injector to a student or individual who may be experiencing an anaphylactic reaction or administering a bronchodilator canister or a bronchodilator canister and spacer to a student or individual experiencing respiratory distress, asthma, or other airway constricting disease.

b. Emergency medical services (911) will be contacted immediately after a stock epinephrine auto-injector is administered to a student or individual, and the school nurse or authorized personnel will remain with the student or individual until emergency medical services arrive. In the event of administration of a stock bronchodilator or bronchodilator canister and spacer to a student or individual, the school nurse will be contacted and will determine, based on professional judgment, the necessary care of a student or individual.

c. The administration of an epinephrine auto-injector, a bronchodilator, or a bronchodilator canister and spacer in accordance with this rule is not the practice of medicine.

14.3(5) *Stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer training.* School employees may obtain a signed certificate to become authorized personnel.

a. Training to obtain a signed certificate may be accomplished by:

(1) Successfully completing, every five years, the medication administration course provided by the department;

(2) Annually demonstrating to the school nurse a procedural return-skills check on medication administration;

(3) Annually completing an anaphylaxis, asthma, or airway constricting disease training program approved by the department;

(4) Demonstrating to the school nurse a procedural return-skills check on the use of an epinephrine auto-injector, bronchodilator canister, and bronchodilator canister and spacer using information from the training, using authorized prescriber instructions, and as directed by the prescription manufacturing label; and

(5) Providing to the school nurse a signed statement, pursuant to Iowa Code section 280.23, that the person agrees to perform one or more of the services described in this rule.

b. Training required after a medication error or medication incident. Authorized personnel or the school nurse directly involved with a medication error or medication incident involving the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers shall be required to follow the medication error or medication incident protocol adopted by the board of directors of the school district or authorities in charge of the school district or accredited nonpublic school. To retain authorization to administer stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers in the school setting, authorized personnel directly involved with a medication error or medication incident will be required to provide a procedural skills demonstration to the school nurse demonstrating competency in the administration of stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

14.3(6) *Procurement and maintenance of stock epinephrine auto-injector, bronchodilator, or bronchodilator canister and spacer supplies.* A school district or accredited nonpublic school may obtain a prescription to stock, possess, and maintain epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.

a. Stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers shall be stored in a secure, easily accessible area for an emergency within the school building, or in addition to other locations as determined by the school district or accredited nonpublic school, and in accordance with the manufacturing label of the stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer.

b. A school district or school will designate an employee to routinely check stock epinephrine auto-injectors, bronchodilator canisters, and bronchodilator canisters and spacers and document the following in a log monthly throughout the calendar year:

- (1) The expiration date;
- (2) Any visualized particles or color change, for epinephrine auto-injectors; or
- (3) Bronchodilator canister damage.

c. The school district or school shall develop a protocol to replace as soon as reasonably possible any logged epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer that is used, is damaged, is close to expiration, or is discolored or has particles visible in the epinephrine auto-injector liquid.

14.3(7) *Disposal of used stock epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers.* The school district or school that administers epinephrine auto-injectors, bronchodilators, or bronchodilator canisters and spacers shall dispose of used cartridge injectors as infectious waste pursuant to the department's medication waste guidance and bronchodilators or bronchodilator canisters and spacers pursuant to the department's medication waste guidance. For purposes of this rule, a multiuse bronchodilator canister is considered "used" when it no longer contains sufficient active ingredient to be medically useful.

14.3(8) *Reporting.* A school district or school that obtains a prescription for stock medications under this rule shall report to the department within 48 hours, using the reporting format approved by the department, each medication incident or error with the administration of a stock epinephrine injector, bronchodilator canister, or bronchodilator canister and spacer or administration of a stock epinephrine auto-injector.

14.3(9) *School district or accredited nonpublic school policy.* A school district or school may stock epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. The board of directors in charge of the school district or authorities in charge of the accredited nonpublic school that stocks epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers shall establish a policy and procedure for the administration of a stock epinephrine auto-injector, bronchodilator canister, or bronchodilator canister and spacer, which shall comply with the minimum requirements of this rule.

14.3(10) *Rule of construction.* This rule shall not be construed to require school districts or accredited nonpublic schools to maintain a stock of epinephrine auto-injectors, bronchodilator canisters, or bronchodilator canisters and spacers. An election not to maintain such a stock shall not be considered to be negligence.

14.3(11) *Opioid antagonists.* A school district may obtain a valid prescription for an opioid antagonist and maintain a supply of opioid antagonists in a secure location at each location where a student may be present for use as provided in this rule. Any school district which does so must comply with rules and procedures adopted by the department of health and human services.

[ARC 7041C, IAB 6/28/23, effective 8/2/23]

281—14.4(279) Suicide prevention, identification of adverse childhood experiences, and strategies to mitigate toxic stress response.

14.4(1) Definitions.

"Adverse childhood experience" means a potentially traumatic event occurring in childhood that can have negative, lasting effects on an individual's health and well-being.

"Postvention" means the provision of crisis intervention, support, and assistance for those affected by a suicide or suicide attempt to prevent further risk of suicide.

14.4(2) *Required protocols.* School districts shall adopt protocols for suicide prevention and postvention and the identification of adverse childhood experiences and strategies to mitigate toxic stress response. The protocols shall be based on nationally recognized best practices.

14.4(3) Required training.

a. By July 1, 2019, the board of directors of a school district shall require annual, evidence-based training at least one hour in length on suicide prevention and postvention for all school personnel who

hold a license, certificate, authorization, or statement of recognition issued by the board of educational examiners and who have regular contact with students in kindergarten through grade 12. The content of the training shall be based on nationally recognized best practices.

b. By July 1, 2019, the board of directors of a school district shall require annual, evidence-based, evidence-supported training on the identification of adverse childhood experiences and strategies to mitigate toxic stress response for all school personnel who hold a license, certificate, authorization, or statement of recognition issued by the board of educational examiners and who have regular contact with students in kindergarten through grade 12. The content of the training shall be based on nationally recognized best practices.

14.4(4) Resources for implementation. The Iowa department of education will publicly provide resources and technical assistance to assist districts in compliance with this rule.

[ARC 4294C, IAB 2/13/19, effective 3/20/19]

281—14.5(256,280) Severability. If any provisions of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or application of this chapter which can be given effect, and to this end the provisions of this chapter are declared to be severable.

This division is intended to implement Iowa Code sections 135.185, 256.7(33), 279.70 and 280.16. [ARC 2311C, IAB 12/9/15, effective 1/13/16; ARC 4294C, IAB 2/13/19, effective 3/20/19; ARC 5739C, IAB 6/30/21, effective 8/4/21]

DIVISION II
COMPREHENSIVE HEALTHY AND SAFE LEARNING ENVIRONMENTS

281—14.6(279) Purpose and objectives: comprehensive healthy and safe learning environments. The purpose of this division is to provide uniform definitions and rules for public schools, accredited nonpublic schools, and area education agencies (AEAs) regarding standards for professional development and training in evidence-based classroom management practices, evidence-based interventions, appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person, and in accordance with 281—Chapter 103 for the reasonable, necessary, and appropriate physical restraint of a student. This division gives clear guidance that classroom clearance may be used only to terminate or prevent a threat of bodily injury and clarifies the required parental notification, response, and reporting of school behavior challenges.

This division also provides clarification of Iowa AEAs', public school districts', and accredited nonpublic school districts' responsibilities and the responsibilities of behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

This division is intended to promote a comprehensive safe learning space for learners and school staff, and to promote the dignity, care, safety, welfare, and security of each child and the school community; encourage the use of proactive, effective, and evidence- and research-based strategies resulting in increased learning for all students; lessen disruption to instruction; and expand supports for educators through teacher preparation, revised protocols, training and professional learning.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.7(279) Definitions. For the purposes of this chapter:

“*Assault*” means the same as defined in Iowa Code section 708.1.

“*Bodily injury*” or “*injury*” means physical pain, illness, or any other impairment of physical condition. For purposes of required reporting, the injury must be the result of intentional act and not accidental and must be a physical injury to a person’s body that is apparent within 24 hours after the incident and may include damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition. Mental or verbal insult is not covered by this definition.

“*Classroom clear*” means clearing all other students out of the classroom to calm a child or to address disruption by a child. It is not necessary to use the phrase “classroom clear” to be covered by this division. The mere use of the term “classroom clear” does not bring that activity within the coverage of this division. Using another term for a “classroom clear” does not remove that activity from the coverage of this division. A classroom clear is not either of the following:

1. Removing other students from a classroom to preserve a student’s dignity/privacy in the event of a medical emergency, health issue, or both, or
2. Emergency procedures a school/district may use in the event of a school crisis or natural disaster.

“*Classroom management*” means the set of skills, practices, and strategies teachers use to maintain productive and prosocial behaviors that enable effective instruction in whole class or small group settings.

“*Department*” means the Iowa department of education.

“*Evidence-based*” means an activity, strategy or intervention that demonstrates a significant effect on improving student outcomes or other relevant outcomes. Activities, strategies, or interventions with strong or moderate evidence should be prioritized.

“*Parent*” means an individual included in the definition of “parent” in rule 281—41.30(256B,34CFR300) and also includes an individual authorized to make decisions for the child pursuant to a power of attorney for temporary delegation of custody or for making educational decisions.

“*Physical restraint*” means the same as defined in rule 281—103.2(256B,280).

“*Property damage*” means serious damage to property of significant monetary value or significant nonmonetary value or importance because of violence. For purposes of required reporting, the property damage must be the result of intentional act and not accidental. In assessing significant nonmonetary value for purposes of this definition, the following shall be considered: the property is not of significant monetary value but difficult to replace or its loss or damage impedes learning, or an object(s) used as a weapon resulting in damage to the object or property.

“*Reasonable and necessary force*” means that force, and no more, which a reasonable person would judge to be necessary under the circumstances that existed at the time, that is not intended to cause pain, and that does not exceed the degree or duration required to accomplish the purposes set forth in rule 281—103.5(256B,280).

“*School district*” means an Iowa public school district directly supported in whole or in part by tax dollars, as defined in Iowa Code section 280.2, and with the power and jurisdiction provided by Iowa Code section 274.1.

“*Social-emotional-behavioral health*” or “*SEBH*” means social, emotional, behavioral and mental well-being that affects how one thinks, feels, communicates, acts, and learns. These contribute to resilience and to how one relates to others, responds to stress and emotions, and makes choices. Foundational knowledge and skills that promote SEBH include self-awareness, self-management, responsible decision-making, social awareness, and relationship skills that support positive well-being and academic success.

“*Therapeutic classroom*” means a classroom designed for the purpose of providing support for any student whose emotional, social, or behavioral needs interfere with the student’s ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student’s current education environment, with or without supports, including but not limited to the general education classroom. It is not necessary to use the phrase “therapeutic classroom” to be covered by this division. The mere use of the term “therapeutic classroom” does not bring those services or locations within the coverage of this division. Using another term for a “therapeutic classroom” does not remove that service or location from the coverage of this division.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.8(279) Classroom clears.

14.8(1) A classroom teacher may clear students from the classroom only if necessary to prevent or terminate an imminent threat of bodily injury to a student or another person in the classroom. A threat

is imminent when it is reasonably likely to inflict pain, illness, or any other impairment of physical condition.

14.8(2) A classroom clear means clearing all other students out of the classroom to calm a child. A classroom clear in which an adult remains with a student to calm the student shall not be considered seclusion.

14.8(3) The restrictions on use of classroom clears pertains to all classrooms, general and special education, ages 3 through 21, when a child is served in a setting that is using public funds for educational purposes.

14.8(4) If a classroom clear is included within a school's or district's crisis response plan, the school or district must also follow the additional requirements outlined in 2020 Iowa Acts, Senate File 2360, and this division.

14.8(5) In determining if a classroom clear may be used to prevent or terminate an imminent threat, the following factors shall be applied:

- a. The size and physical, mental, and psychological condition of the student;
- b. The nature of the student's behavior;
- c. The presence of a weapon or material that can be weaponized;
- d. The extent and nature of resulting bodily injury to the student and other persons in the classroom; and
- e. The prevention of physical intervention that will likely escalate behavior and result in bodily injury.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.9(279) Required parent/guardian notifications and responses.

14.9(1) *General.* If a classroom clear is used to prevent an imminent threat, the following notifications and actions shall occur:

- a. The school principal shall, by the end of the school day if possible, but at least within 24 hours after the incident, notify the parents/guardians of all students assigned to the classroom that it was cleared.
- b. The notification shall not identify, directly or indirectly, any students involved in the incident giving rise to the classroom clearance.
- c. The principal shall request that the parent/guardian of the student whose behavior caused the classroom clear meet with the principal, the classroom teacher, and other staff as appropriate.

14.9(2) *Students with disabilities.* When a student with a disability whose behavior caused a classroom clear and has an individualized education program (IEP) or a behavioral intervention plan (BIP), the classroom teacher shall call for and be included in a review and potential revision of the student's IEP or BIP by the student's IEP team. The AEA, in collaboration with the school district, may, when the parent or guardian meets with the IEP team during the review or reevaluation of the student's IEP, inform the parent or guardian of individual or family counseling services available in the area. The public agencies must provide those services if those services are necessary for a free appropriate public education, pursuant to 281—subrule 41.320(7).

14.9(3) *Students without disabilities.*

- a. If a student does not have an IEP or a BIP, the meeting shall include an intervention plan that reduces the likelihood of the recurrence of behaviors requiring a classroom clear.
- b. If a student has a BIP but does not have an IEP, the classroom teacher shall call for and be included in a review and potential revision of the student's behavioral intervention plan.
- c. If the school suspects the student whose behavior resulted in a classroom clear might be eligible for a BIP, individual health plan (IHP), safety plan, or IEP, the public agencies shall promptly determine the child's eligibility in accordance with the procedures required for determining eligibility.

14.9(4) *Parent input.* The team must consider parent input in identifying supports to address behaviors that caused the classroom clear.

- a. If the parent of a student with an IEP chooses not to participate in the meeting, the school must follow procedures to document efforts to invite the parent, as required by rule

281—41.322(256B,34CFR300), and inform the parent of proposed changes to the IEP or BIP, or both, as required by rule 281—41.503(256B,34CFR300).

b. If the parent of a student without an IEP chooses not to participate in the meeting, the school will continue to support the student's needs by planning and providing intervention for the student.

14.9(5) Additional provisions. When calling for a meeting, the classroom teacher may be required to follow procedures established by the school district or AEA to request such a meeting. Any recommended change to a student's behavior intervention plan, individual health plan, safety plan, or educational placement shall be made in accordance with the procedures required for amending said plan or changing said placement.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.10(279) Documentation and reporting.

14.10(1) General. A classroom teacher shall report to the principal any incident of assault or violence that results in injury or property damage by a student enrolled in the school. For purposes of this rule, "attending students" includes all students who are actively attending school, suspended or expelled during the reporting school year. Districts should document all incidents that occur in a school building, on school grounds, or at a school-sponsored function by students attending school in the district. The school district shall report to the department, in a manner prescribed by the department, an annual count of disaggregated incidents of assault, violence resulting in injury, violence resulting in property damage, and referral/transfer to a therapeutic classroom that includes the therapeutic components as described in subrule 14.13(2). Incidents shall be reported if they occurred by a student in a school building, on school grounds, or at a school-sponsored function.

14.10(2) Contents of report. The report shall include demographic information on students reported as victims and perpetrators, disaggregated by race, gender, national origin, age, grade level, and disability status, along with any other data required by the department to implement the Elementary and Secondary Education Act as amended by the Every Student Succeeds Act, Public Law 114-95, and with safeguards to ensure student privacy.

14.10(3) Reporting by the department. The department of education shall compile and summarize the data it receives under this rule and submit a report to the general assembly each year by November 1.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.11(256) Crisis response.

14.11(1) General. The following consists of appropriate responses to classroom behavior that presents an imminent threat of bodily injury and consistent with rules for seclusion and restraint:

a. Responses shall include nationally recognized best practices of crisis response/intervention to de-escalate behaviors that are likely to result in bodily harm.

b. Crisis response strategies shall include a safety assessment and continuum of strategies informed by the level of risk and the safety assessment.

c. When possible, response strategies shall use less disruptive, nonphysical intervention prior to the use of physical interventions, unless the circumstances are such that physical intervention is necessary to ensure the safety of the student and others.

14.11(2) Use of reasonable force. Notwithstanding the ban on corporal punishment in rule 281—103.3(256B,280), no employee subject to these rules is prohibited from using reasonable and necessary force in compliance with this chapter and 281—Chapter 103. An employee is not privileged to use unreasonable force to accomplish any of the purposes listed in this chapter and 281—Chapter 103. If physical force is used, school employees shall comply with any requirements imposed by 281—Chapter 103 and this chapter.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.12(256) Prevention of classroom behaviors that present an imminent threat.

14.12(1) Appropriate responses to behaviors, including classroom behavior that presents an imminent threat of bodily injury, shall be part of evidence-based tiered supports within the department's continuous improvement framework to support student SEBH.

14.12(2) The evidence-based tiered supports shall:

- a. Include universal support for all students that foster the emotional well-being of students through schoolwide safe and supportive environments.
- b. Be culturally responsive.
- c. Be trauma responsive.
- d. Include positive school discipline practices.
- e. Include crisis prevention, intervention and de-escalation that is based on student SEBH needs and reasonable in response to the behavior that is being exhibited.
- f. Include proactive strategies which enable schools to identify and intervene early in order to minimize the escalation of identified behavioral health symptoms and other barriers to school success.
- g. Include classroom management practices that include the following evidence-based practices:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- h. Engage parents and guardians as partners in identifying appropriate supports for the students.
- i. Support student development of social-emotional competencies and skills through planned universal instruction.
- j. Have a set of specific supplemental interventions and intensive intervention supports that:
 - (1) Are for students whose behaviors are unresponsive to low-intensity strategies.
 - (2) Are based on functional behavior assessment (FBA).
 - (3) Are supported by individuals trained to handle such issues.
 - (4) Involve parents in development and ongoing review.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.13(256) Therapeutic classroom. A school district may include therapeutic classrooms as part of its district's or building's tiers of SEBH supports. A therapeutic classroom is designed for the purpose of providing support for any student, with or without an IEP, whose emotional, social, or behavioral needs interfere with the student's ability to be successful in the current educational environment, with or without supports, until the student is able to successfully return to the student's current education environment, with or without supports, including but not limited to the general education classroom. A placement in a therapeutic classroom shall not be permanent or indefinite but shall be reviewed periodically as called for in this rule. For the purpose of this chapter, the word "classroom" is a descriptor of an educational set of services that create the educational environment that may include but is not required to include a separate physical setting from other students.

14.13(1) Continuum of programming. Therapeutic classrooms include the therapeutic programming students may need to support them across a range of educational settings or learning spaces, or both, and are not necessarily standalone or isolated classrooms. Therapeutic classroom supports are part of a district's tiers of SEBH supports.

14.13(2) Therapeutic classroom requirements. For state cost reimbursement and reporting purposes, a therapeutic classroom shall:

- a. Include the following therapeutic components:
 - (1) A multidisciplinary team who collaborates regularly to support design, implementation and decision-making regarding therapeutic program supports including but not limited to an individual qualified to conduct diagnostic assessments and support SEBH programming for individuals with social-emotional concerns;
 - (2) Practices that enhance positive childhood experiences;
 - (3) Clearly articulated and taught behavioral expectations and routines;
 - (4) Regular assessment of social-emotional competencies with targeted individualized instruction, small group social-emotional instruction, or both;

- (5) Individualized BIPs developed based on FBAs and trauma-informed practice;
- (6) Regular engagement of family to review progress and make decisions for more or less restrictive programming;
- (7) Supports for generalization and transition to less restrictive supports/settings since a therapeutic classroom is a temporary intervention. Supports include opportunities to practice social-emotional skills in natural contexts with similar age/grade peers.
 - b. Be operated by and housed in the school district seeking reimbursement.
 - c. Have appropriately licensed and certified teacher(s).
 - d. Follow program standards for the age(s) served and the full extent of the district's comprehensive education program, including:
 - (1) Preschool programs must follow preschool program standards, as specified in 281—Chapter 16;
 - (2) Prekindergarten-twelfth grade programs must follow 281—Chapter 12;
 - (3) Programs that serve students with IEPs must also follow 281—Chapter 41.
 - e. Not solely consist of any one of the following:
 - (1) Calming room/space;
 - (2) Single strategy or program without individualization;
 - (3) Space/location for disciplinary action;
 - (4) Seclusion room.

14.13(3) General education students. When general education students are served through a therapeutic classroom, the following must occur:

- a. The therapeutic classroom must have clear requirements for referral, admission, progress monitoring, and exit that focus on supporting learners to return to general services,
- b. Each general education student must have an individualized BIP developed based on an FBA,
- c. When a student receives therapeutic services for 50 percent or more of the school day, a team of qualified professionals, the teacher, and the family must review the BIP every 60 days to consider the need for transition to more or less intensive programming,
- d. If, at any point, public agencies suspect a disability, the public agencies must request consent for a full and individual evaluation for special education from the parent as required by 281—Chapter 41.

14.13(4) Special education students. Districts operating therapeutic classrooms that serve learners with IEPs shall follow 281—Chapter 41, including requirements for education in the least restrictive environment.

14.13(5) Consortium agreements. A district may enter into a cost-sharing consortium agreement with one or more school districts or area education agencies to provide therapeutic classroom supports. Districts shall not enter into an agreement to purchase or hold seats in a therapeutic classroom. If a district seeks cost reimbursement for student(s) who attend a therapeutic classroom:

- a. The therapeutic classroom shall be housed within the district's boundaries;
- b. The district seeking reimbursement shall be fiscally responsible for the therapeutic classroom;
- c. The district seeking reimbursement shall be responsible for operating the therapeutic classroom.

14.13(6) Rule of construction. A school district is not required to operate a therapeutic classroom; however, a school district is required to ensure therapeutic services are available, whether in-district or otherwise, to students who need those services to access or benefit from an education.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.14(256) Therapeutic classroom—claims. A school district may submit claims to the department for the costs of providing therapeutic classroom services and transportation services in accordance with this rule.

14.14(1) Reimbursement of transportation services. If the general assembly appropriates moneys for purposes of transportation claims reimbursement in accordance with this subrule, the resident school district may submit a claim to the department for reimbursement for transportation services for a student who is transported to a therapeutic classroom operated by another school district or accredited nonpublic

school and located more than 30 miles from the student's designated school or accredited nonpublic school.

a. Claims are allowable for students enrolled in the school district or in an accredited nonpublic school located in the district boundary and who do not have an assigned special education weighting.

b. Such claims may be allowable when the school districts or school district and accredited nonpublic school have a shared agreement to provide the therapeutic classroom.

c. Claims shall be made to the department of education using an invoice supplied by the department and completed by the school district providing transportation during the school year.

d. Claims must include a listing of actual costs per student transported to a therapeutic classroom, including number of days transported, transportation miles, and other actual costs.

14.14(2) *Claims for reimbursement of services.*

a. By June 15, 2022, and annually by June 15 thereafter, districts may submit a claim for reimbursement of therapeutic classroom services for the prior school year.

b. By July 1 of each year, the department shall draw warrants payable to school districts for such claims.

c. On June 15, 2022, and continuing each June 15 thereafter, districts providing therapeutic classrooms may submit a claim for reimbursement to the department for students served by their therapeutic classroom during the prior school year who have BIPs but no IEP weighting. Districts may submit claims for 1.5 weighting for the number of days they served the student and the number of days in the school district's calendar.

d. School districts will collect student-level data throughout the year and submit it at the end of the year using a department invoice.

e. In order for the school district to submit a claim for reimbursement for students attending an accredited nonpublic school or receiving competent private instruction, the student shall be counted as a shared-time student in the district in which the nonpublic school of attendance is located.

f. Reimbursement will be prorated if claims exceed the amount appropriated.

g. Claims must include: student served in a therapeutic classroom, confirmation the student has a BIP and does not have a weighted IEP for the period claimed, number of days served and the number of days in the school district's calendar.

h. The costs of providing transportation to nonpublic school pupils as provided in this rule shall not be included in the computation of district cost under Iowa Code chapter 257 but shall be shown in the budget as an expense from miscellaneous income. Any transportation reimbursements received by a school district for transporting nonpublic school pupils shall not affect district cost limitations of Iowa Code chapter 257. The reimbursements provided in this rule are miscellaneous income as defined in Iowa Code section 257.2.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.15(256,279,280) Required training. This rule applies to public schools, nonpublic school districts and area education agencies.

14.15(1) An employee must receive training that complies with 281—Chapter 103 prior to using any form of physical restraint or seclusion and includes research-based alternatives to physical restraint and seclusion.

14.15(2) An employee must receive training regarding the least restrictive environment. While there is a presumption that the general education environment is the least restrictive environment, data may overcome that presumption. "General education classroom" is not synonymous with "least restrictive environment." Training must include the process and procedures for:

a. Making placement decisions based on individual student performance data and participation with peers without disabilities; and

b. Reviewing student performance data to determine whether changes need to be made to ensure the individual is being educated in the learner's least restrictive environment.

14.15(3) AEA staff, classroom teachers and school administrators shall receive training prior to using a classroom clear to calm a student. Training shall be reviewed regularly, but no less frequently than once every three school years, and cover the following topics:

- a. The rules of this chapter;
- b. The school's specific policies and procedures regarding the rules of this chapter;
- c. Training on recognizing and responding to incidents that are an imminent threat of bodily injury;
- d. Student, parent/guardian, and staff notifications and parent follow-up requirements;
- e. Reporting requirements for incidents of assault and violence resulting in injury or property damage;
- f. Reporting requirements for referral and transfer to therapeutic classroom(s);
- g. The school's specific crisis response plan for incidents of imminent threat;
- h. Staff supports following a crisis or significant event.

14.15(4) Within one year of beginning employment in a teaching position in Iowa, a classroom teacher shall receive training on the prevention of behaviors that present an imminent threat. Training must include the following topics:

- a. The school's specific policies and procedures for creating learning environments that are safe and supportive.
- b. Evidence-based culturally responsive approaches to student discipline.
- c. Evidence-based classroom management strategies that include:
 - (1) An effectively designed physical classroom.
 - (2) Predictable classroom routines.
 - (3) Posted positive classroom expectations.
 - (4) Prompts and active supervision.
 - (5) Varied opportunities to respond.
 - (6) Acknowledgments for expected behavior.
- d. Universal instruction of social-emotional competencies.
- e. Engaging families as partners in identifying appropriate supports for learner success.
- f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279).

14.15(5) AEA and school district staff who engage in intervention planning to support supplemental and intensive social-emotional interventions shall receive training on evidence-based interventions for challenging classroom behaviors. Training must include the following topics:

- a. FBAs;
- b. Using FBAs to design BIPs;
- c. Individual safety plans;
- d. Supports for student reentry to learning following a significant event;
- e. Supports for teacher implementation of BIPs;
- f. Crisis prevention, crisis intervention, and crisis de-escalation techniques consistent with rule 281—14.4(279) that are culturally responsive and trauma responsive;
- g. Duties and responsibilities of school resource officers and other responders; the techniques, strategies and procedures used by responders; and knowledge of who in the building is trained and authorized in seclusion and restraint;
- h. Documentation and notification requirements for incidents of seclusion, restraint, classroom clear and transfer/referral to a therapeutic classroom.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.16(256) Department responsibilities, evidence-based standards, guidelines and expectations. By June 30, 2022, the department shall develop, establish, and distribute to all school districts evidence-based standards, guidelines, and expectations for the appropriate and inappropriate responses to behavior in the classroom that present an imminent threat of bodily injury to a student or another person to assist the districts in compliance with this rule. The standards, guidelines, and expectations will be consistent with 281—Chapter 103. The evidence-based standards, guidelines,

and expectations for the appropriate and inappropriate responses to behavior in the classroom that presents an imminent threat of bodily injury will be based on the department's continuous improvement framework to support student social-emotional-behavioral health (SEBH). The director shall consult with the area education agencies to create comprehensive and consistent standards and guidance for professional development relating to successfully educating individuals in the least restrictive environment, and for evidence-based interventions consistent with the standards established pursuant to this rule.

This division is intended to implement Iowa Code chapters 256, 279 and 280.
[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.17 to 14.19 Reserved.

DIVISION III
SCHOOL BEHAVIORAL HEALTH SCREENING AND TELEHEALTH

281—14.20(280A) Purpose and objectives: contracted behavioral health screening and telehealth. This division describes the responsibilities of Iowa AEAs, public school districts, and accredited nonpublic school districts and behavioral health service providers as required by Iowa Code section 280A.1, should they choose to enter into agreements for behavioral health screenings or telehealth services.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.21(256B,280A) Definitions. For the purposes of this division, the following definitions apply:

“Accredited nonpublic school” means any school, other than a public school, that is accredited pursuant to Iowa Code section 256.11 for any and all levels for grades 1 through 12.

“Area education agency” or *“AEA”* means an area education agency established pursuant to Iowa Code chapter 273.

“Behavioral health screening” or *“screening”* means a screening and assessment performed using a universal behavioral health screening and assessment tool, approved for use by the department of education in consultation with the department of public health and the department of human services, to identify factors that place children at higher risk for behavioral health conditions, to determine appropriate treatment or intervention, and to identify the need for referral for appropriate services.

“Behavioral health services” means services provided by a health care professional operating within the scope of the health care professional's practice which address mental, emotional, medical, or behavioral conditions, illnesses, diseases, or problems.

“Educational service agency” means a governmental agency or government entity which is established and operated exclusively for the purpose of providing educational services to one or more educational institutions.

“Health care professional” means a physician or other health care practitioner licensed, accredited, registered, or certified to perform specified health care services consistent with state law.

“In-person encounter” means that the mental health professional and the student are in the physical presence of each other and are in the same physical location during the provision of behavioral health services.

“Mental health professional” means the same as defined in Iowa Code section 228.1.

“Patient” means a student receiving a behavioral health screening or other behavioral health services in accordance with this chapter.

“Primary care provider” means the personal provider trained to provide the first contact and continuous and comprehensive care to a patient and includes but is not limited to any of the following licensed or certified health care professionals who provide primary care: a physician who is a family or general practitioner or a pediatrician, an advanced registered nurse practitioner, or a physician assistant.

“Provider-patient relationship” means the relationship between the patient and the mental health professional that meets the requirements for commencement and establishment of a valid provider-patient relationship.

“*Public school*” means any school directly supported in whole or in part by taxation.

“*School*” means any of the following: an accredited nonpublic school, an area education agency, or a public school.

“*School district*” means a school district described in Iowa Code chapter 274.

“*Student*” means a person enrolled in and attending an accredited nonpublic school or a public school in grades 1 through 12.

“*Telehealth*” means the same as defined in Iowa Code section 514C.34: the delivery of health care services through the use of interactive audio and video. Telehealth does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.22(280A) Behavioral health screenings in school settings.

14.22(1) A school district, an accredited nonpublic school, or an AEA may contract with a mental health professional or a nationally accredited behavioral health care organization in order to provide universal behavioral health screenings to students. If the school district, accredited nonpublic school, or area education agency contracts with mental health professionals to conduct behavioral health screenings, the following applies:

a. The screenings shall be administered with the contracted mental health professional present, using a screener approved by the department, in consultation with the department of public health and the department of human services.

b. The school district, accredited nonpublic school, or AEA that contracts for on-site student behavioral health screenings shall obtain written parent or guardian consent or, in the case of a student who has reached the age of majority, the student’s written consent prior to the student’s participating in each screening.

c. At any point before or during the screening, a student may opt out or discontinue participation in the screening without retribution.

14.22(2) The parental consent shall allow for the mental health professional to disclose the screening results to the school or AEA if there is a credible threat to the health and safety of the student or others and provide the appropriate emergency contact. The parental consent may allow for the mental health professional to disclose screening information to the school or AEA in order to support the student(s) who may need intervention that could be provided through the school.

14.22(3) The school district or AEA shall ensure that the mental health professionals contracted to administer the screeners are qualified to administer the selected behavioral health screener.

14.22(4) The school district or AEA shall have procedures to secure and limit the access to health information to comply with the Health Insurance Portability and Accountability Act (HIPAA) in accordance with parental consent.

14.22(5) If a mental health professional conducts the screening and determines that a student needs additional behavioral health services, the mental health professional:

a. Shall notify the parent or guardian of the student of the results of the screening.

b. May notify the student’s primary care provider, with parent or guardian consent, or the consent of the student who has reached the age of majority.

c. May provide a list of local primary care providers to the parent or guardian if the student does not have a primary care provider.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.23(280A) Establishment of provider-patient relationship for telehealth in school setting.

14.23(1) A school district, accredited nonpublic school, or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.23(2) If a mental health professional provides behavioral health services via telehealth on school/AEA premises, the mental health professional shall first establish a valid provider-patient relationship. The provider-patient relationship is established when:

a. The student, with the consent of the student’s parent or guardian when the student has not yet reached the age of majority, seeks help from a mental health professional;

- b.* The mental health professional agrees to provide treatment of the student; and
- c.* The student's parent or guardian agrees to have the student treated by the mental health professional.

14.23(3) A valid provider-patient relationship may be established through any of the following means:

- a.* An in-person medical interview and physical examination conducted under the standard of care required for an in-person encounter;
- b.* Consultation with a primary care provider who has an established relationship with the patient and who agrees to participate in or supervise the patient's care; or
- c.* Use of interactive audio and video telehealth, if:
 - (1) The standard of care does not require an in-person encounter, in accordance with evidence-based standards of practice and telehealth practice guidelines that address the clinical and technological aspects of telehealth; or
 - (2) The student's parent or guardian is present.

14.23(4) If a provider-patient relationship is established and the student has not yet reached the age of majority, parent or guardian consent shall be obtained prior to the student receiving behavioral health services via telehealth in a school or AEA setting and shall be required each academic year that the student receives telehealth services.

14.23(5) The school district shall maintain any consent form completed by a parent or guardian.
[ARC 5739C, IAB 6/30/21, effective 8/4/21]

281—14.24(280A) Behavioral health services provided via telehealth in a school setting.

14.24(1) On or after January 1, 2021, a school district, accredited nonpublic school or AEA may provide access to behavioral health services via telehealth on school/AEA premises.

14.24(2) If the school district, accredited nonpublic school or AEA provides access to behavioral health services via telehealth on school/AEA premises, it shall:

- a.* Provide a secure, confidential, and private room for services and the technology necessary to conduct telehealth services.
- b.* Maintain parent or guardian consent forms for each academic year the student receives services.
- c.* Maintain a schedule for student appointments and arrange for student access to the room by a school nurse or other appropriately trained school or AEA agency employee.
- d.* Ensure that no employee is present in the same room as the student during the session or service.
- e.* Provide information to the student participating in telehealth services about how and to whom to report inappropriate behavior by a mental health professional.
- f.* Provide access to the student's parent or guardian to participate in any of the student's telehealth sessions.

14.24(3) The school district, accredited nonpublic school or AEA shall not access any of the student's medical records or be responsible for billing for the telehealth services.

14.24(4) A mental health professional with prescribing authority who provides telehealth services shall not alter the dosage of an existing medication or prescribe any new medication during a telehealth session without prior consultation with the student's parent or guardian.

14.24(5) The mental health professional shall notify the student's parent or guardian of the time and place for each scheduled telehealth session and specify the means available for the parent or guardian to participate in the session.

14.24(6) The mental health or primary care provider shall keep confidential all patient records and shall not share with the school or AEA unless:

- a.* Appropriate release of information is obtained, or
- b.* Shared to prevent a serious and imminent threat to the health and safety of a student or other person, and the mental health professional assesses that the student has intent and ability to carry out the threat.

14.24(7) A public school district, an accredited nonpublic school, an AEA, the boards of directors of a school district or AEA, authorities in charge of accredited nonpublic school, and employees of schools

or agencies who act reasonably and in good faith shall not be liable for any injury resulting from the provision of voluntary behavioral health screening or behavioral health services.

[ARC 5739C, IAB 6/30/21, effective 8/4/21]

This division is intended to implement Iowa Code chapter 280A.

[Filed ARC 2311C (Notice ARC 2183C, IAB 10/14/15), IAB 12/9/15, effective 1/13/16]

[Filed ARC 3387C (Notice ARC 3088C, IAB 6/7/17), IAB 10/11/17, effective 11/15/17]

[Filed ARC 4294C (Notice ARC 4157C, IAB 12/5/18), IAB 2/13/19, effective 3/20/19]

[Filed ARC 5739C (Notice ARC 5580C, IAB 4/21/21), IAB 6/30/21, effective 8/4/21]

[Filed ARC 7041C (Notice ARC 6880C, IAB 2/8/23), IAB 6/28/23, effective 8/2/23]

TITLE I
DEPARTMENT OPERATIONS
CHAPTER 1
ORGANIZATION AND OPERATIONS

421—1.1(17A,216A) Definitions. As used in these rules, unless the context otherwise requires:

“*Board*” means the human rights board.

“*Department*” means the department of health and human services.

“*Director*” means the director of the department of health and human services.

“*Underrepresented*” means the historical marginalization of populations or groups in the United States and Iowa, including but not limited to African Americans, Asian and Pacific Islanders, persons who are deaf or hard of hearing, persons with disabilities, Latinos, Native Americans, women, persons who have low socioeconomic status, at-risk youth, and adults or juveniles with a criminal history.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—1.2(17A,216A) Authority. The department is established with the authority, powers, and duties set forth in Iowa Code chapter 216A.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—1.3(17A,216A) History. The department was originally conceived in 1987 as an umbrella agency for several agencies that had previously operated independently and reported directly to the governor.

In 1993, the department’s statutory provision in Iowa Code chapter 601K was transferred to chapter 216A.

As part of the government reorganization and efficiency bill in 2010 (2010 Iowa Acts, Senate File 2088), the department has streamlined its administrative functions and budget processes to operate as one department in a strategically cohesive manner. The director is appointed by the governor and has general supervision over the administration and operation of the department and its divisions. Administrators of the divisions are appointed by and report to the director. Ten divisions were consolidated into three divisions within the department: the division of community action agencies; the division of criminal and juvenile justice planning; and the division of community advocacy and services. Seven divisions devoted to advocacy for various populations were redesignated as offices, which are included within the division of community advocacy and services. Except for the commission of Native American affairs, all commissions within the division of community advocacy and services are limited to seven voting members. The human rights board is created within the department.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—1.4(17A,216A) Mission. The mission of the department is to ensure basic rights, freedoms, and opportunities for all by empowering underrepresented Iowans and eliminating economic, social, and cultural barriers. The department helps individuals attain economic independence by ensuring access to government services and advancing educational achievement and entrepreneurial success consistent with their aspirations.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—1.5(17A,216A) Organization.

1.5(1) Contact information. Requests for assistance, information, inquiries, submissions, petitions, and other communications may be directed to the department as follows: The office is located at 321 E. 12th Street, Des Moines, Iowa 50319. The main telephone number is (515)242-5655. The fax number is (515)242-6119. Regular office hours are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays. The department’s website is humanrights.iowa.gov.

1.5(2) Director. The duties and responsibilities of the director are described in Iowa Code section 216A.2. The director is appointed by the governor, subject to confirmation by the senate. The director serves at the pleasure of the governor. The director is the chief administrative officer of the department and, in that capacity, administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director include preparing a budget,

managing the internal operations of the department, appointing the deputy director and administrators of the divisions, and employing personnel. The director serves as an ex officio member of all of the commissions or councils within the department, as well as an ex officio, nonvoting member of the human rights board.

1.5(3) Central administration. The central administration office is responsible for the overall planning, policy, management, communications, finances, and operations of the department.

1.5(4) Divisions. The department is composed of the following divisions and offices:

a. Division of community action agencies. A description of the division is contained in 421—Chapter 20.

b. Division of criminal and juvenile justice planning. A description of the division is contained in 421—Chapter 30.

c. Division of community advocacy and services. The division of community advocacy and services contains the following offices: the office of Latino affairs, the office on the status of women, the office of persons with disabilities, the office of deaf services, the office on the status of African Americans, the office of Asian and Pacific Islander affairs, and the office of Native American affairs. A description of the division is contained in 421—Chapter 40.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—1.6(216A) Human rights board. The authority and duties of the human rights board are specified in Iowa Code section 216A.3. The department shall provide staff support to the board.

1.6(1) The board shall consist of 16 members, including 11 voting members and 5 nonvoting members and determined as follows:

a. The voting members shall consist of nine voting members selected by each of the permanent commissions within the department, and two voting members appointed by the governor. For purposes of this subrule, “permanent commissions” means the commission of Latino affairs, commission on the status of women, commission of persons with disabilities, commission on community action agencies, commission of deaf services, justice advisory board, commission on the status of African Americans, commission of Asian and Pacific Islander affairs, and commission of Native American affairs. The term for voting members is four years. The board shall select a chairperson from the voting members of the board.

b. The nonvoting members shall consist of the department director; two state representatives, one appointed by the speaker of the house of representatives and one by the minority leader of the house of representatives; and two state senators, one appointed by the majority leader of the senate and one by the minority leader of the senate. The regular term of an appointment made by a member of the general assembly shall be two years pursuant to Iowa Code section 69.16B.

1.6(2) A majority of the voting members of the board shall constitute a quorum, and the affirmative vote of two-thirds of the voting members present is necessary for any substantive action taken by the board.

1.6(3) The board shall meet not less than four times a year. Meetings shall comply with the open meetings law, Iowa Code chapter 21. Agendas and approved minutes will be posted on the department’s website.

1.6(4) The board shall have the following duties:

a. Develop and monitor implementation of a comprehensive strategic plan to remove barriers for underrepresented populations and, in doing so, to increase Iowa’s productivity and inclusivity, including performance measures and benchmarks.

b. Approve, disapprove, amend, or modify the budget recommended by the director for the operation of the department, subject to the budget requirements pursuant to Iowa Code chapter 8.

c. Adopt administrative rules pursuant to Iowa Code chapter 17A, upon the recommendation of the director, for the operation of the department.

d. By November 1 of each year, approve the department report to the general assembly and the governor that covers activities during the preceding fiscal year.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—1.7(216A) Potential conflicts of interest. Any member of the department's boards, commissions, or councils established in Iowa Code chapter 216A who may have a conflict of interest shall not vote on any substantive action on the matter in conflict. When a conflict of interest is determined to exist, the member shall abstain from voting and shall be recorded as abstaining when votes are taken. A quorum may include any member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose. Any vote by a member with a conflict shall be excluded.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapters 17A and 216A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

TITLE II
DIVISION OF COMMUNITY ACTION AGENCIES
CHAPTER 20
FUNCTIONS OF DIVISION

421—20.1(216A) Definitions. As used in these rules, unless the context otherwise requires:

“*Administrator*” means the administrator of the division of community action agencies within the department of health and human services.

“*Division*” means the division of community action agencies within the department of health and human services.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—20.2(216A) Functions of division. The functions of the division are described in Iowa Code chapter 216A, subchapter VI. The division is under the direction of an administrator who reports to the director.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—20.3(216A) Purpose. The purpose of the division is to strengthen, supplement, and coordinate efforts to develop the full potential of each citizen by recognizing certain community action agencies and supporting certain community-based programs delivered by community action agencies.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapters 17A and 216A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 21
COMMUNITY SERVICES BLOCK GRANT (CSBG)
[Prior to 12/29/21, see 427—Chapter 22]

421—21.1(216A,PL97-35) Definitions. For the purpose of these rules, unless context otherwise requires:

“*Community action agency*” or “*eligible entity*” means any organization which was officially recognized as a community action agency under the provisions of Section 673(1) of the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, Title VI, Subtitle B, as amended, and Iowa Code sections 216A.91 and 216A.93.

“*CSBG*” means community services block grant program.

“*CSBG Act*” means the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, Title VI, Subtitle B, as amended.

“*Division*” means the division of community action agencies of the department of health and human services.

“*Program year*” means the year beginning October 1 and ending the succeeding September 30. The program year is numbered for that year in which it ends.

“*Reduction*” means funding reduced below the proportional share of funding the eligible entity received in the previous program year.

“*Termination*” means permanent withdrawal of the eligible entity’s authority to obligate funds before that authority would otherwise expire. If an eligible entity’s authority to obligate funds is terminated, no funds may be obligated by the eligible entity after the effective date of the termination.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.2(216A,PL97-35) Purpose. The CSBG as established by the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, Title VI, Subtitle B, as amended, provides assistance to states and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become self-sufficient.

Pursuant to Iowa Code section 216A.92, the division shall administer the community services block grant.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.3(216A,PL97-35) Uses of funds. The CSBG makes available to the state of Iowa funds to be used:

21.3(1) To support activities that are designed to assist low-income families and individuals:

- a. To remove obstacles and solve problems that block the achievement of self-sufficiency;
- b. To secure and retain meaningful employment;
- c. To attain an adequate education;
- d. To make better use of available income;
- e. To obtain and maintain adequate housing and a suitable living environment;
- f. To obtain emergency assistance through loans, grants, or other means to meet immediate and urgent family and individual needs; and
- g. To achieve greater participation in the affairs of the communities involved.

21.3(2) To address the needs of youth in low-income communities through youth development programs.

21.3(3) To make more effective use of, and to coordinate with, other programs related to the purposes of this program.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—21.4(216A,PL97-35) Apportionment distribution.

21.4(1) Iowa apportionment. There is appropriated to the division from the fund created by Iowa Code section 8.41(1) funds to implement the CSBG as described in the CSBG Act.

21.4(2) *Distribution of funds.* CSBG funds received according to subrule 21.4(1) shall be allocated to the division and eligible entities as provided by federal law and in accordance with the Iowa Acts.

21.4(3) *Poverty-level population.* The state shall use U.S. census statistics to determine the poverty-level population in each community action area.

21.4(4) *Local share.* There shall be no local share required under the CSBG.
[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.5(216A,PL97-35) Eligibility requirements. The eligibility requirements for an organization to receive and administer CSBG funds are as follows:

21.5(1) *Organization.* The organization must meet the definition of a “community action agency” as defined in these rules.

21.5(2) *Board composition.* A recognized community action agency shall be governed by a board of directors composed of at least nine members. The board membership shall follow the requirements in Iowa Code section 216A.94.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—21.6(216A,PL97-35) Community action plan. All eligible entities shall submit a community action plan for the purpose of applying for CSBG funds. Community action plans must be outcome-based and antipoverty-focused and tie directly to the eligible entity’s community assessment.

21.6(1) *Timing.* Eligible entities shall be informed in writing by the division of the due date for the community action plan and the amount of their allocation in accordance with subrule 21.4(2).

21.6(2) *Contents.* Instructions for preparing the community action plan shall be provided by the division to all eligible entities. In addition to other information specified in the instructions, the community action plan must:

a. Document the continuous use of the full Results Oriented Management and Accountability cycle of assessment, planning, implementation, achievement of results, and evaluation for planning and administering the CSBG;

b. Include a budget that equals the amount of the eligible entity’s allocation;

c. Include a description of the service delivery system targeted to low-income individuals and families in the service area;

d. Include a description of how linkages will be developed to fill identified gaps in the services, through the provision of information, referrals, case management, and follow-up consultations;

e. Include a description of how CSBG funds will be coordinated with other public and private resources;

f. Include a description of how CSBG funds will be used to support innovative community and neighborhood-based initiatives related to the purposes in rule 421—21.2(216A,PL97-35); and

g. Include outcome measures to be used to measure eligible entity performance in promoting self-sufficiency, family stability, and community revitalization.

21.6(3) *Nondiscrimination provisions.* Eligible entities must ensure that no person shall, on the basis of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any activity funded in whole or in part with CSBG funds.

21.6(4) *Community assessment.* Eligible entities must conduct a community assessment at least once every three years. The community assessment shall include data specific to poverty, qualitative and quantitative data, and key findings on the causes and conditions of poverty and the needs of the communities assessed. The results of the assessment shall be used to plan activities contained in the community action plan.

21.6(5) *Contract.* The division will issue the eligible entity a CSBG contract once the division accepts the community action plan. The contract shall specify required and allowable program activities, general and special conditions, program and fiscal reporting, and audit requirements.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.7(216A,PL97-35) Review and acceptance of community action plans.

21.7(1) Compliance review. All activities proposed in the community action plan shall be reviewed by the division personnel for:

- a. Compliance with the specific purposes and uses of funds outlined in rules 421—21.2(216A,PL97-35) and 421—21.3(216A,PL97-35);
- b. Inclusion of assurances that the eligible entity will conduct the CSBG in compliance with all applicable laws; and
- c. Inclusion and proper completion of all forms and instructions included in the request for community action plans.

21.7(2) Performance. Acceptance of community action plans is dependent on the satisfactory performance of the eligible entity in the past funding year(s). The minimum standards include: timely and adequate expenditure report submissions and program report submissions, prudent management of funds, conformance with state and federal laws relative to the restrictions in the use of funds, requirements regarding the eligible entity's annual audit, and adequate record keeping. Additionally, available records, audits, and determinations from other relevant state and federal agencies may be utilized.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.8(216A,PL97-35) Payments.

21.8(1) Method of payment. Eligible entities receiving CSBG funds shall submit a monthly funding request and expenditures report containing the monthly expenditures of the eligible entity in carrying out the activities funded through the CSBG for each month in which activity occurred.

21.8(2) Payment refusal. The division may refuse or withhold payment of funds for good cause, such as evidence of fraud, lack of management controls, or noncompliance with CSBG contract conditions. Such refusal or withholding shall be appropriately documented, and the eligible entity shall be informed of the reason for refusal or withholding. Regular payment procedures may resume after corrective action and CSBG contract conditions have been met by the eligible entity.

21.8(3) Receipt of federal funds. All payments shall be subject to the receipt of CSBG funds by the division. The termination, reduction or delay of CSBG funds to the division shall, at the division's option, be reflected in a corresponding modification to CSBG contracts already made.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.9(216A,PL97-35) Amendments to CSBG contract.

21.9(1) Total budget. The total of all payments to the eligible entity by the division for the activities required under the eligible entity's CSBG contract shall not exceed the total budget unless modified by a budget amendment to the CSBG contract or by written notice of a funding change by the division.

21.9(2) Budget deviations. Eligible entity expenditures that exceed budgeted cost category amounts will not be disallowed for payment solely because of minor deviations from the budgeted amount. However, any deviation exceeding 10 percent of the budgeted cost category amount shall require a budget amendment to the CSBG contract, with prior approval granted by the division.

21.9(3) Other amendments. Requests for community action plan or CSBG contract amendments other than those addressed in subrules 21.9(1) and 21.9(2) shall be considered on a case-by-case basis in conformance with applicable federal and state laws.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.10(216A,PL97-35) Ineligible items. CSBG funds may not be used for the following activities or costs:

1. Any partisan or nonpartisan political activity or any political activity associated with a candidate, or faction group, in an election for public or party office; any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election; or any voter registration activity.
2. The purchase or improvement of land, or the purchase, construction, or permanent improvement (other than low-cost residential weatherization or other energy-related home repairs) of any building or

other facility. Exceptions shall only be provided through the waiver procedure described in Section 678F(a) of the CSBG Act.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—21.11(216A) Audits and records. Eligible entities shall arrange and pay for an annual audit. Audits shall be performed by a certified public accountant and in accordance with generally accepted auditing standards. Audit procedures shall conform to the 2 CFR Chapter I, Office of Management and Budget Governmentwide Guidance for Grants and Agreements; and Chapter II, Part 200, et al., Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. In addition, the division may request more frequent audits or examinations of financial records of the eligible entity in order to ensure adequate financial controls are in place and operating.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.12(216A,PL97-35) Designating eligible entities for unserved areas. If any geographic area of the state is not, or ceases to be, served by a community action agency, and the governor decides to serve such area, the division will adhere to the requirements in Section 676A of the CSBG Act, U.S. Department of Health and Human Services statutory guidance, and other federal and state laws to solicit applications from qualified organizations.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.13(216A,PL97-35) Termination and reduction of funding. The division may terminate the designation of or reduce the share of CSBG funds allocated to an eligible entity if the division determines that an eligible entity fails to comply with the terms of an agreement, or the Iowa CSBG State Plan, to provide CSBG services or to meet appropriate standards, goals, and other requirements established by the division, including performance objectives. If the division finds cause to terminate the designation of or reduce the funding of an eligible entity, the division will adhere to the requirements in Section 678C of the CSBG Act, U.S. Department of Health and Human Services statutory guidance, and other federal and state laws, including provisions of notification, technical assistance, corrective action, opportunity for a hearing, and federal review, to initiate proceedings to terminate the designation of or reduce the funding of the eligible entity.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—21.14(216A,PL97-35) Client appeal and hearing. Eligible entities shall adopt a client appeal and hearing procedure to address CSBG client complaints. The procedure shall be used for all clients to file a complaint for the services or benefits provided by the eligible entity and funded solely by the CSBG. The procedure shall also be used when a community action program, co-funded with the eligible entity's CSBG funds, does not have a community action program-specific client appeal and hearing procedure.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—21.15(216A,PL97-35) Further criteria. The Iowa CSBG State Plan and Application and the Iowa CSBG Policies and Procedures Manual are incorporated by reference as part of these rules. If any rule in this chapter conflicts with federal law or rules, federal law or rules shall prevail.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapter 216A and P.L. 97-35.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 22
LOW-INCOME HOME ENERGY ASSISTANCE PROGRAM (LIHEAP)

[Prior to 12/29/21, see 427—Chapter 10]

421—22.1(216A,PL97-35,PL98-558) Purpose. Pursuant to the requirements of the U.S. Department of Health and Human Services (DHHS) and the Social Security Administration (SSA), as set forth in Title XXVI of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 as amended by P.L. 98-558, and Iowa Code section 216A.92, the department of health and human services (department) will administer the low-income home energy assistance program (LIHEAP).

LIHEAP is designed to aid qualifying low-income Iowa households (homeowners and renters) in the payment of a portion of their residential heating costs for the winter heating season, to encourage regular utility payments, to promote energy awareness and to encourage reduction of energy usage through energy efficiency, client education, and weatherization.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—22.2(216A,PL97-35,PL98-558) Household eligibility.

22.2(1) Households with incomes at or below the annually determined federal poverty guidelines, but not to exceed 150 percent of the guidelines, or an amount equal to 60 percent of the state median income for the state, according to DHHS, which are published annually in the Federal Register, may be eligible for assistance under LIHEAP. To receive benefits, an application must be made, eligibility determined, and program funds available before any payments may be made.

22.2(2) Proof of income eligibility is required as outlined in the Iowa LIHEAP Policy and Procedures Manual. Any individual listed on a LIHEAP-approved application for the current fiscal year may not be listed on another application unless an exception is granted by the division.

22.2(3) Income criteria and guidelines are contained in the Iowa LIHEAP State Plan and the Iowa LIHEAP Policy and Procedures Manual.

22.2(4) All payments are contingent upon the availability of federal funds.

22.2(5) The amount of assistance a household may receive is determined by a payment matrix that considers household income, household size, fuel type, and other targeting factors, as described in the current Iowa LIHEAP Policy and Procedures Manual.

22.2(6) All households applying for this program will simultaneously be making application for weatherization assistance, and 421—Chapter 23 shall govern weatherization applications.

22.2(7) Both owner-occupied and renter-occupied households will be assisted.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.3(216A,PL97-35,PL98-558) Local administering agencies (LAAs).

22.3(1) The department shall administer the LIHEAP program by contracting with LAAs meeting program and fiscal guidelines as required by federal law. Contracts with the LAAs will specify required and allowable program activities, DHHS regulations, special conditions, transfer of electronic data to fuel vendors and the state, program and fiscal reporting to the department, and audit requirements.

22.3(2) Each LAA will conduct outreach activities to ensure that eligible households are made aware of the program. In addition to its normal outreach functions, each LAA will authorize its workers to take applications in an applicant's home as well as at local community, church, and elderly centers and other locations deemed appropriate. A notice of the appeal and hearing procedure must be posted at each intake site, and a copy of the appeal and hearing procedure and any other state-required handouts must be given to each client at the time of application or determination.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.4(216A,PL97-35,PL98-558) Application period. The application period for the program is between October 1, or the first working day of October, and April 30, or the last working day of April, or as defined in the annual Iowa LIHEAP Policy and Procedures Manual.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.5(216A,PL97-35,PL98-558) Payments.

22.5(1) *Types of payments.* The following types of energy assistance payments may be made:

a. To suppliers on behalf of eligible households. The client's assistance shall remain as a credit on the client account until the program assistance is expended or the account is terminated.

b. Eligible households that pay an undesignated portion of the rent toward energy costs will receive assistance sent directly to the secondary vendor.

c. Direct payments may be made to eligible households as outlined in the Iowa LIHEAP Policy and Procedures Manual.

22.5(2) *Duplicate and fraudulent payment control.* Each LAA is required to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on household members' names, addresses, and social security numbers, as well as vendor account numbers.

22.5(3) *Referrals.* Each LAA is required to refer all suspected cases of fraud, including duplicate payments, overpayments, and fraudulent statements on applications, to the division for investigation.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.6(216A,PL97-35,PL98-558) *Change in status.* The level of assistance for the program year will be determined based on the household's circumstances at the time of approval. If a household moves, a household of one passes away, or a household moves to a different service territory, etc., after applying for the program, the process outlined in the Iowa LIHEAP Policy and Procedures Manual is to be followed.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.7(216A,PL97-35,PL98-558) *Vendor agreement.* A signed utility vendor agreement must be on file with the LAA before payments may be made to the vendor. If a fuel supplier does not sign a vendor agreement, a direct payment may be made to the eligible applicant. In cases where a vendor has not complied with all provisions of the vendor agreement, the state may approve direct payments to clients as an alternative.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.8(216A,PL97-35,PL98-558) *Crisis assistance.* To be eligible for crisis assistance, a household must file an application, meet the income guidelines of LIHEAP, and meet the definition of "crisis" as defined in the Iowa LIHEAP Policy and Procedures Manual.

22.8(1) *Definition.*

"*Energy crisis*" means weather-related and supply shortage emergencies and other household-related emergencies, as defined in the current Iowa LIHEAP State Plan, including: a nonworking heating system, a temporary need for alternate shelter, disconnection from utility service, disconnection from utility service imminent, low or empty propane tank, and, when medically necessary, a window/portable air-conditioning unit or a repair of an existing central air unit.

22.8(2) *Evaluation.* Each crisis application will be evaluated individually by the LAA, who shall determine the appropriate resolution and the amount of assistance to be provided, as defined by the current Iowa LIHEAP State Plan and Iowa LIHEAP Policy and Procedures Manual.

22.8(3) *Appeal procedure.* Any household which has been denied crisis assistance may utilize the LIHEAP appeal procedure as described in rule 421—22.10(216A,PL97-35,PL98-558).

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.9(216A,PL97-35,PL98-558) *Assurance 16 activities.* LIHEAP customer services that encourage and enable households to reduce their home energy needs, and thereby reduce their need for energy assistance, shall be provided as assurance 16 activities. Services may include conservation education, referrals to other programs, needs assessment, budget counseling, vendor negotiations, energy assessment, energy plans, and low-cost energy efficiency measures.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.10(216A,PL97-35,PL98-558) *Appeal and hearing procedures.* The following appeal and hearing procedures shall be used.

22.10(1) An applicant may initiate an appeal if the application was denied or if incorrect facts or improper procedures were used to determine eligibility, assistance amounts, or services. The applicant has 30 calendar days from the date of the approval or denial letter to appeal that decision by mailing or delivering the request for appeal to the LAA at which the application was made.

22.10(2) If the LAA neither approves nor denies the application within 30 calendar days of receipt of a complete application, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

22.10(3) To appeal, the applicant (claimant) must submit a written appeal to the LAA at which the applicant applied and include the action the applicant would like taken and any other information which might affect the decision. Those claimants unable to read or write shall have the LAA assist them in reading, writing, or understanding appeals and hearings and their associated procedures.

22.10(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within seven calendar days of the date an appeal was requested (postmark date if sent in mail).

22.10(5) If the claimant does not agree with the decision reached, the claimant may write the LAA within 14 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held with the division. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

22.10(6) The LAA will forward all information about the request for a hearing to the division, and a hearing will be scheduled within 14 calendar days of receipt of the appeal and request for a hearing. The claimant will receive written notice of a scheduled state hearing from the division. The notice will include the date, time, and place of the hearing. State hearings may be held by telephone at a mutually convenient time or in person. During the hearing, all information will be reviewed and a decision will be rendered by the division within seven calendar days.

22.10(7) The claimant may appeal the decision of the division to the Iowa department of inspection and appeals. The claimant must submit a written appeal to the division within seven calendar days (postmark date if sent in mail) of receiving the division's decision. The division will follow the appeal procedures outlined in this chapter.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—22.11(216A,PL97-35,PL98-558) Further criteria. The Iowa LIHEAP State Plan, the Iowa LIHEAP Policy and Procedures Manual, and assistance award criteria for the program are incorporated by reference as part of these rules. If any rule in this chapter conflicts with federal law or rule, federal law or rule shall prevail.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapter 216A, P.L. 97-35, and P.L. 98-558.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 23
WEATHERIZATION
[Prior to 12/29/21, see 427—Chapter 5]

421—23.1(216A,PL94-385,PL98-558) Purpose. Pursuant to the Energy Conservation and Production Act, P.L. 94-385; the Omnibus Budget Reconciliation Act, P.L. 98-558; and Iowa Code section 216A.99, the department of health and human services (department) will administer the weatherization assistance program.

The purpose of the program is to reduce heating and cooling costs for low-income households, particularly those with elderly members, persons with disabilities, or young children, by improving the energy efficiency of their homes while ensuring their health and safety.
[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—23.2(216A,PL94-385,PL98-558) Eligible households.

23.2(1) A household occupying a dwelling unit is eligible for assistance under the weatherization assistance program if the household:

- a.* Has an annual income no higher than 200 percent of the federal poverty guidelines determined in accordance with criteria established by the Director of the Office of Management and Budget (OMB).
- b.* Is receiving supplemental security income (SSI) or family investment program (FIP) assistance, regardless of income.

23.2(2) Household eligibility, including income verification, will be determined in accordance with the application requirements for the low-income home energy assistance program (LIHEAP), the application for which is considered a joint application. Household eligibility and prioritization for weatherization services are established annually.

23.2(3) Both owner-occupied and renter-occupied dwellings may be weatherized. However, rental units occupied by low-income residents shall be weatherized providing benefits accrue primarily to the low-income tenants, rents are not raised because of the weatherization, and no undue or excessive enhancement occurs to the value of the dwelling unit. Landlords of rental dwellings must agree to have their dwellings weatherized before assistance is provided.

23.2(4) Provision of all weatherization program services are contingent upon the availability of funds.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—23.3(216A,PL94-385,PL98-558) Local administering agencies (LAAs).

23.3(1) The division shall administer the program by utilizing community action agencies (CAAs), their approved subcontractors, or other public or nonprofit entities that have shown the ability or have the capacity to undertake a timely and effective weatherization program. Program funds shall be used for the purchase and installation of weatherization materials; training and technical assistance; administration; and supportive services.

23.3(2) LAAs will be required to sign a contractual agreement which specifies required and allowable program activities, including U.S. Department of Energy regulations, special conditions, participant forms, program and fiscal reporting, and audit requirements.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—23.4(216A,PL94-385,PL98-558) Application period. Households may apply for weatherization assistance between October 1, or the first working day of October, and September 30, or the last working day of September, as defined in the annual Weatherization Assistance Program State Plan.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—23.5(216A,PL94-385,PL98-558) Payments.

23.5(1) *Duplicate and fraudulent payment control.* Each LAA is required to provide a system to monitor and prevent possible duplicate and other fraudulent applications and payments. Duplication cross-checks shall be based on the unique client/vendor identifier.

23.5(2) Referrals. Each LAA is required to refer all suspected cases of fraud, including duplicate payments, overpayments, and fraudulent statements on applications, to the division for investigation.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—23.6(216A,PL94-385,PL98-558) Appeal and hearing procedures. The following appeal and hearing procedures shall be used.

23.6(1) When an applicant is denied assistance or wishes to file a complaint about the quality or extent of work performed, the applicant has 30 days from the date of the denial letter or completion of the work to appeal that decision by mailing or delivering the request for appeal to the LAA. Appeals for quality of work performed shall be subject to warranty requirements of the LAA and its subcontractors.

23.6(2) If the LAA neither approves nor denies an appeal within 30 calendar days of receipt, the applicant may treat the failure to act as a denial. The applicant then has 30 additional calendar days to appeal.

23.6(3) To appeal, the applicant (claimant) must submit a written appeal to the LAA through which weatherization services were provided and include the action the applicant would like taken and any other information which might affect the decision. Those claimants unable to read or write shall have the LAA assist them in reading, writing or understanding appeals and hearings and their associated procedures.

23.6(4) The LAA will act on the claimant's request and notify the claimant of the result in writing within 30 calendar days of the date an appeal was requested (postmark date if sent in mail).

23.6(5) If the claimant does not agree with the decision reached, the claimant may write the LAA within 14 calendar days of the decision (postmark date if sent in mail) and request that a state hearing be held with the division. The claimant must explain in writing why the agency's decision is being appealed and include any information which might affect the decision.

23.6(6) The LAA will forward all information concerning the request for hearing to the division, and a hearing will be scheduled within 14 calendar days of receipt of the appeal and request for a hearing. The claimant will be sent written notice of the date, time, and place of the hearing. State hearings may be held by telephone at a mutually convenient time or in person. At the hearing, all information will be reviewed and a decision rendered by the division within seven calendar days.

23.6(7) The claimant may appeal the decision of the division to the Iowa department of inspection and appeals. The claimant must submit a written appeal to the division within seven calendar days (postmark date if sent in mail) of receiving the division's decision. The division will follow the appeal procedures outlined in this chapter.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—23.7(216A,PL94-385,PL98-558) Further criteria. The Weatherization Assistance Program State Plan and Weatherization Assistance Program Policy and Procedures Manual are incorporated by reference as part of these rules. If any rule in this chapter conflicts with federal law or rule, the federal law or rule shall prevail.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code section 216A.99, P.L. 94-385, and P.L. 98-558.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 24
FAMILY DEVELOPMENT AND SELF-SUFFICIENCY (FaDSS) PROGRAM

[Prior to 12/29/21, see 427—Chapter 15]

PREAMBLE

These rules define and structure the family development and self-sufficiency council within the department of health and human services and the family development and self-sufficiency program administered by the division. The purpose of the program is to fund, evaluate, and provide recommendations on programs that provide services to assist families at risk of instability or dependency on the family investment program to move toward self-sufficiency.

These rules establish council membership and duties, provisions for the grant proposal process and the awarding of grants, grant contract provisions, criteria and conditions for at-risk families, provisions for referral of families, grantee responsibilities, and the requirement for program evaluation.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—24.1(216A) Definitions. As used in these rules, unless the context otherwise requires:

“*Applicant*” means a public or private organization that applies for a family development and self-sufficiency grant through the request for proposal process.

“*Council*” means the family development and self-sufficiency council.

“*Department*” means the department of health and human services.

“*Division*” means the division of community action agencies of the department of health and human services.

“*Grant*” means an award approved by the council to fund a family development and self-sufficiency project.

“*Grantee*” means an applicant whose proposal is selected by the council and who enters into a grant agreement with the division.

“*Program*” or “*FaDSS program*” means the family development and self-sufficiency (FaDSS) program.

“*Proposal*” or “*grant proposal*” means an application for grant funds to fund specific projects.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—24.2(216A) Council membership and duties. Council membership, powers and duties are established in Iowa Code section 216A.107.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.3(216A) Council terms and procedures.

24.3(1) Terms of office. Unless otherwise provided by law, terms of members, election of officers, and other procedural matters shall be as determined by the council pursuant to Iowa Code section 216A.107(2).

a. The term of office for the members of the council selected by the other members of the council pursuant to Iowa Code sections 216A.107(1) “*f*” to “*h*” and “*l*” shall be three years. Such members whose terms expire may be reappointed and shall receive actual expenses incurred while serving in their official capacity, subject to statutory limits. The members as specified under Iowa Code sections 216A.107(1) “*f*” and “*g*” shall also receive per diem compensation as provided in Iowa Code section 7E.6.

b. The term of office of a legislative member of the council shall end if the legislative member ceases to be a member of the general assembly.

c. Vacancies in membership of the council shall be filled in the same manner as the original appointment.

24.3(2) Meetings and procedures.

a. The council shall meet at least four times per year. Special meetings may be called by the chairperson or upon the written request of a majority of council members.

b. Members of the council shall elect a chairperson, vice chairperson and such other officers as the council deems necessary to two-year terms at the first council meeting held after July 1 in even-numbered

years. Officers shall assume office at the first meeting following the election. A vacancy in any elective office shall be filled by council action.

c. A quorum shall consist of a majority of the members eligible to vote. When a quorum is present, a position is carried by a majority of the members, or members' designees, eligible to vote.

d. Copies of the minutes of council meetings shall be filed in the office of the administrator of the division, Department of Health and Human Services, Lucas State Office Building, Des Moines, Iowa 50319.

e. The council is a governmental body subject to the provisions of Iowa Code chapters 21 and 22. Procedural matters of the council not addressed by these rules shall be determined according to Robert's Rules of Order, consistent with Iowa law.

f. The provisions of Iowa Code section 69.15 regarding nonattendance and vacancies shall apply to the council except that, with respect to Iowa Code section 69.15(3), the council chairperson shall accept or reject resignations and notify the member of such decision. Vacancies shall be filled as provided in subrule 24.3(1).

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—24.4(216A) Identification of conditions and criteria for families at risk. The council has identified the following conditions and criteria which may place families at risk of instability or of dependency on the family investment program:

24.4(1) Educational level of head of household.

a. Head of household has less than a high school education.

b. Head of household lacks basic literacy skills.

24.4(2) Work experience of head of household.

a. Head of household has never been employed.

b. Head of household has multiple episodes of employment lasting less than one year.

c. Head of household is currently unemployed.

24.4(3) Household composition.

a. Members are homeless or nearly homeless.

b. Members outside the nuclear family are in residence.

c. One or more children in the household were born while the parent was on public assistance.

d. One or more children in the household are identified as having special needs.

e. Household includes an alcohol or substance abuser.

f. Household includes a past or current perpetrator of child abuse or domestic violence.

g. Household includes a member with a record of incarceration.

24.4(4) Background of head of household.

a. Head of household was a teenager at birth of first child.

b. Head of household has a disability or chronic illness (mental or physical).

c. Head of household is a past or current victim of child abuse or domestic violence.

d. Head of household grew up in a household with alcohol or substance abuse.

24.4(5) Public assistance history.

a. Head of household grew up in a household that received public assistance.

b. Household has experienced multiple episodes of receipt of public assistance.

c. Household has been on public assistance for three or more years.

24.4(6) Other conditions. The council has also identified the following conditions that may contribute to instability or long-term dependency:

a. Geographic location.

b. Lack of employment opportunity.

c. Lack of available services.

d. Lack of transportation.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.5(216A) Referral of families. Families who meet one or more of the conditions and criteria identified in rule 421—24.4(216A) may be referred to the program by the department, the department

of workforce development, family self-referral, or other sources. The department shall provide to the division on a monthly basis a list of families who are identified as receiving family investment program benefits and who are not currently participating in the FaDSS program.
[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—24.6(216A) Funding of grants.

24.6(1) *Availability of funds.* The council shall develop requests for proposals for the awarding of grants, subject to availability of funds. Grants shall not exceed 36 months; however, the division shall approve grantee budgets on an annual basis, based upon and subject to available funds.

24.6(2) *Grant application process.* Applications for grants shall be distributed by the division through a request for proposals. Applicants shall submit proposals to the division in accordance with instructions. Applications shall be submitted by mail or hand delivery to the Bureau of Community Services, Division of Community Action Agencies, Department of Health and Human Services, Lucas State Office Building, Des Moines, Iowa 50319, by the date and time indicated in the request for proposals.

24.6(3) *Grant proposals.* Grant proposals for the program shall include the following elements:

a. Designation of the families to be served that meet one or more criteria for being at risk of family instability or of dependency on the family investment program, and agreement to serve families who are referred by the department from the family investment program and who meet the criteria.

b. Designation of the services to be provided for the families served, including assistance regarding job-seeking skills, family budgeting, nutrition, self-esteem, methamphetamine education, health and hygiene, parenting and child education preparation, and goal-setting. Proposals shall indicate the support groups and support systems to be developed for the families during the transition between the need for assistance and self-sufficiency.

c. Designation of the manner in which other needs of the families will be provided for, including but not limited to child care assistance, transportation, substance abuse treatment, support group counseling, food, clothing, and housing.

d. Designation of the process for training of staff that provides services and the appropriateness of training for the purposes of meeting family development and self-sufficiency goals of the families served.

e. Designation of the support available within the community for the program and for meeting subsequent needs of families and the manner in which community resources will be made available to the families served.

f. Designation of the manner in which the program will be subject to audit and evaluation.

g. Designation of agreement provisions for tracking and reporting performance measures.

h. Description of project budget. Budgets must conform to all applicable state and federal requirements regarding allowable costs.

i. Description of overall organizational capacity to successfully meet program goals, including personnel and fiscal management capacity.

24.6(4) *Selection of grant proposals.* Criteria for selection of grant proposals include, but are not limited to, the elements identified in subrule 24.6(3). All proposals timely received shall be reviewed by the division, which shall make recommendations to the council. The council shall review the projects recommended by the division and make the final decision with respect to grant awards.

24.6(5) *Notification of applicants.* Applicants shall be notified of grant award decisions within 60 days after the due date for receipt of proposals.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—24.7(216A) Grants not renewed and grants terminated or reduced. If the council determines that a grantee's project funding will not be renewed or if the council terminates or reduces a grantee's funding, the balance of funds not renewed or terminated or reduced shall be awarded by the council to other grantees for which funding is approved, based on criteria approved by the council. In the event

no previously approved grantees have been selected, the council shall fund new grantees selected by the council as a result of a competitive grant application process.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.8(216A) Appeal. Applicants dissatisfied with the council's actions regarding grant proposals for funds and grantees dissatisfied with termination of a contract may appeal the council's decision. The letter appealing the decision shall be submitted to the division within ten business days of the date of the notice of decision. The appeal must be based on a contention that the process 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 or was biased or unfair. The appeal must specify the basis for the appeal and must include supporting evidence. Within 15 working days of the receipt of the appeal, the director of the department shall issue a final decision.

In the case of a grant award, no disbursements will be made to a grantee for a period of ten calendar days following issuance of the notice of decision to award. If an appeal is filed within the ten days, all disbursements will be held pending a final decision on the appeal. All applicants will be notified if an appeal is filed.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.9(216A) Contract with grantee. Funds for grants approved by the council shall be awarded pursuant to a contract entered into by the division and the grantee.

24.9(1) Negotiation. The division shall conduct contract negotiations with the selected applicant, including negotiations regarding possible modifications to a grant proposal.

24.9(2) Withdrawal of contract offer. If the applicant and the division are unable to successfully negotiate a contract, the council may withdraw the award offer and award the grant to the applicant with the next-highest-scoring proposal.

24.9(3) Contract revisions. The division and the grantee may negotiate revisions to the contract to allow for nonmaterial expansion or modification of services so long as such revisions do not increase the total amount of the grant. The division shall have the right to approve an amendment to the contract budget moving grant funds between budget line items if the funds represent more than 10 percent of the budget line item.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.10(216A) Grantee responsibilities.

24.10(1) Marketing. The grantee shall be responsible for marketing its services to referral sources and to families who have been referred to the program. All marketing plans, procedures, and material used by the grantee must be approved in writing by the division prior to use.

24.10(2) Selection of families. Grantees shall serve referred families who meet one or more of the risk criteria, subject to capacity limitations. For the families who voluntarily agree to participate in the program, the grantee is responsible to timely notify the division through the FaDSS data system of the enrollment. This notification shall identify the families in the department's database who are receiving grantee services.

24.10(3) Record management. The grantees shall maintain records which include, but are not limited to:

- a. Specific family information.
- b. Specific services provided.
- c. Fiscal records of expenditures.
- d. Any other specific records as may be determined necessary by the division.

24.10(4) Reports. Grantees shall provide to the division the following reports:

a. A monthly funding request and expenditure report that includes, but is not limited to, grant funds expended as they relate to each line item in the budget.

b. An annual report that includes a summary of the activities by the grantee during the contract period.

c. Other reports as deemed necessary by the division.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—24.11(216A) Evaluation. The grantee shall be evaluated by the division at least once prior to the end of each 12-month period of the contract. The purpose of the evaluation is to evaluate the progress of the grantee toward the stated goals and objectives of the project, as well as other matters relating to contractual obligations. The grantee shall receive a written report of the evaluation from the division.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code section 216A.107 and chapter 17A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 25
INDIVIDUAL DEVELOPMENT ACCOUNT (IDA)
[Prior to 12/29/21, see 427—Chapter 14]

421—25.1(541A) Definitions. As used in these rules, unless the context otherwise requires:

“*Account holder*” means an individual who is the owner of an individual development account.

“*Administrator*” means the administrator of the division of community action agencies of the Iowa department of health and human services.

“*Charitable contributor*” means an individual, company or organization that makes a contribution through a nonprofit association described in Section 501(c)(3) of the Internal Revenue Code, which association makes a deposit to an individual development account and which association is exempt from taxation under Section 501(a) of the Internal Revenue Code.

“*Division*” means the division of community action agencies of the Iowa department of health and human services.

“*Federal poverty level*” means the poverty income guidelines established annually for a calendar year and published in the Federal Register by the U.S. Department of Health and Human Services.

“*Financial institution*” means a financial institution including, but not limited to, a bank, savings and loan, or credit union approved by the division to accept individual development accounts.

“*Household*” means the adults related by blood, marriage or adoption, or who are unrelated but have maintained a stable family relationship together over a period of time, and individuals under 18 years of age related to the above adults by marriage, blood or adoption who are living together. “Living together” refers to domicile as evidenced by the parties’ intent to maintain a home for their family and does not include a temporary visit.

“*Individual contributor*” means an individual who makes a deposit to an individual development account and is not the account holder or a charitable contributor.

“*Individual development account*” or “*IDA*” means an investment account which has the characteristics described in Iowa Code section 541A.2 and is operated by the operating organization.

“*Individual development account state match fund*” means the fund established in the state treasury under the authority of the division into which are deposited funds for payment to operating organizations for state match payments to individual investment accounts and administrative costs to implement the individual investment account program.

“*Minor account holder*” means an account holder who is younger than 18 years of age.

“*Operating organization*” means an entity selected by the division for involvement in operating individual development accounts directed to the eligible target population.

“*Source of principal*” means any of the following sources of a deposit:

1. Deposits made by the account holder.
2. Deposits of state match payments.
3. Deposits of individual development account moneys that are transferred from another individual development account holder. The moneys transferred from another individual development account shall be considered to be a deposit of principal made by the account holder.
4. Deposits made on behalf of the account holder by an individual contributor or a charitable contributor.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—25.2(541A) Establishment of individual development accounts. An investment account qualifies as an IDA when it is established and operates in accordance with the following:

25.2(1) Operating organization. The investment account shall be established through an operating organization.

25.2(2) Account. The account shall be opened at a financial institution and kept in the name of an individual account holder.

25.2(3) Deposits. Deposits made to an IDA are also known as sources of principal and shall be made in any of the manners indicated in the definition of “source of principal” in rule 421—25.1(541A).

25.2(4) *Investment of funds.* The funds deposited in the IDA may be invested in any investment that the financial institution is authorized to offer to the public.

25.2(5) *Income.* The account earns income.

25.2(6) *Maximum deposits of principal.* The total of all sources of principal in an individual development account may not exceed \$30,000.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.3(541A) Individual development account state match fund. An individual investment account state match fund is created in the state treasury under the authority of the division, the administrator of the IDA program. Funds in the state match fund shall be used by the division to provide the state match payment for account holder deposits in accordance with Iowa Code section 541A.3 and for the costs of administration of the IDA program. At least 85 percent of the funds appropriated to the state match fund shall be used for state match payments, and the remainder may be used for the administrative costs of the operating organization. Interest or earnings on moneys deposited in the state match fund shall be credited to the fund. Notwithstanding Iowa Code section 8.33, moneys appropriated to the state match fund shall not revert to any other fund.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.4(541A) Eligibility, state match payments, and state tax provisions.

25.4(1) *Eligibility based on countable household income level.* Eligibility shall be based on the prospective account holder's household income for the calendar year preceding the calendar year in which the IDA will be opened. The household income shall not exceed 200 percent of the federal poverty level as published in the same year. If an account holder's household income exceeds 200 percent of the federal poverty level in any subsequent year following the year that the account holder established the account, the account shall remain open, but the account holder shall not be eligible to receive the state savings match payment for deposits made during the year following the year when the household income exceeds 200 percent of the federal poverty level. If the prospective account holder files an income tax return on a fiscal year basis, the household income must nonetheless be computed on a calendar year basis.

25.4(2) *Countable household income.*

a. The household's countable income shall be the Iowa net income as defined in Iowa Code section 422.7, with the following inclusions and exclusions:

(1) Inclusions to the extent not already included in Iowa net income are as follows:

1. Capital gains.
2. Alimony.
3. Child support money.
4. Cash public assistance and relief, except property tax relief under Iowa Code chapter 425, subchapter II.

5. The gross payment amount of any pension or annuity including, but not limited to, railroad retirement benefits.

6. Military retirement and veterans' disability pensions.
7. Interest which is received from local, state or federal government securities.
8. Workers' compensation.
9. The gross amount of disability income or "loss of time" insurance.

(2) Exclusions are as follows:

1. Gifts from nongovernmental sources.
2. Surplus foods, including food assistance.
3. Payments received by an individual under the age of 18 under the federal Social Security Act.
4. Other in-kind relief supplied by a governmental agency.

b. Income shall not be reduced by either a net operating loss carryover or by a capital loss carryover.

25.4(3) *Determination of income status and eligibility.*

a. In lieu of calculating countable household income as provided in subrule 25.4(2) to determine income status and eligibility of an individual to hold an IDA, the operating organization may use evidence of the individual's enrollment in a program with income eligibility restrictions that are equal to or less than the maximum household income provided in subrule 25.4(1) as sufficient for determining an individual's eligibility to hold an IDA.

b. In order to determine the amount of countable household income of the individual seeking to open an IDA and to maintain household income records on an annual basis, the operating organization shall use any of the following methods or other methods deemed appropriate by the operating organization to obtain accurate income information:

(1) The operating organization shall ask both the individual who wishes to establish an IDA and other members of the individual's household who have filed federal or state income tax returns to furnish a copy of the returns with attached W-2 statements, to sign a release of information form permitting the operating organization to receive from the Iowa department of revenue summary information indicating the Iowa net income, or to receive a copy of the state income tax return for the specific calendar year used to establish income eligibility to participate in the IDA program and for specified successive calendar years during which the IDA account is open. The operating organization shall protect the confidentiality of this information.

(2) If the individual and members of the individual's household have not filed federal or state income tax returns for the calendar year used to determine eligibility, the operating organization shall ask the individual to provide copies of available financial records of the household to determine the amount of countable income for the calendar year used to determine eligibility.

(3) The operating organization may also ask the individual seeking to hold an IDA to sign a release of information form allowing the operating organization to obtain individual and household income records held by agencies administering the programs referred to in paragraph 25.4(3) "a." The operating organization shall use this information to verify and maintain household income records of individuals seeking to hold an IDA, thereby facilitating the administration of the IDA program. The operating organization shall maintain the confidentiality of this information. Countable household income determinations shall include the amount of the cash assistance provided through the programs referred to in paragraph 25.4(3) "a."

(4) If an individual has minimal or no financial records and the operating organization determines that the totality of the individual's circumstances corroborates a credible explanation for the absence of said records, the operating organization may accept a written self-declaration from the individual as sufficient to document initial income eligibility to hold an IDA.

c. The operating organization shall obtain and maintain income information records from the account holder and all members of the account holder's family on a yearly basis to determine continued IDA eligibility.

25.4(4) *Exemption from income tax for income earned on assets in an IDA.* Income earned on principal in an IDA shall be exempt from state income tax even if the account holder's household income is greater than 200 percent of the federal poverty level for the tax year.

25.4(5) *State match payments.* The operating organization shall determine the account holder's countable household income and account deposits on an annual basis for the purpose of computing the state match payment. The operating organization shall file with the division a claim for a state match payment on behalf of the account holder by April 30 of the year following the year in which the account holder made deposits into the IDA. The claim shall be filed on a form provided by the division. The division shall make a payment of a savings match on a 1:1 ratio on amounts of up to \$2,000 that an eligible account holder deposited in the account holder's account the previous year. The total state savings match for all years shall not exceed \$2,000 for any IDA. Neither the moneys transferred to an IDA from another IDA nor the state match received by the account holder pursuant to this subrule shall be considered an account holder deposit for purposes of determining a state match payment. The division or operating organization shall make the state match payment directly to the IDA in the manner deemed appropriate by the division.

25.4(6) Tax implications. IDAs shall be subject to department of revenue rule 701—40.44(422,541A).
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.5(541A) Requests for proposals—operation of IDAs.

25.5(1) Issuance of requests for proposals. The division shall issue requests for proposals (RFPs) for operating organizations interested in operating an IDA program. The RFP shall require the operating organization to provide information in its proposal regarding the financial institution that the operating organization will use for the proposed IDA program. The division shall include such information in evaluating proposals submitted in response to the RFP.

25.5(2) Review criteria used to evaluate and select proposals responding to the RFP. The division shall evaluate and select proposals submitted by operating organizations in response to the RFP based upon, but not limited to, the criteria as provided in the RFP and the following criteria, which shall be ongoing responsibilities of the operating organization:

a. The project shall provide for a safe and secure investment mechanism for IDAs using a financial institution approved by the division. This provision shall include assurances to contributors that a process is in place to ensure that contributions will be used for approved purposes as provided in subrule 25.6(1).

b. The proposed project shall link the making of an account holder's contributions to an IDA with other services provided by or outcomes identified by the operating organization in the proposal. The proposed project shall include mechanisms for the operating organizations to monitor and enforce the identified outcomes and services.

c. The operating organization shall provide documentation establishing experience and ability to execute the project as proposed. Minimum capabilities shall include:

- (1) An ability to provide financial education including asset-specific education;
- (2) An ability to link with tax preparation assistance;
- (3) Familiarity and ability to work with the proposed target population; and
- (4) A strong record of successful management.

d. The operating organization's proposal shall include a commitment by the operating organization to provide independent matching funds for contributions made by account holders to an IDA on not less than a 1:1 ratio.

e. The proposal shall include a monitoring and evaluation plan for certifying the proposed project's outcomes.

f. The proposal shall include agreement and acknowledgment by the operating organization that it shall have ongoing responsibility for:

- (1) Certifying that an investment account is an IDA based on its having the characteristics described in Iowa Code section 541A.2.
- (2) Certifying annually the income eligibility of each account holder and the amount of contributions made by the account holder to the IDA during the preceding tax year, in order to determine the account holder's eligibility for the state match payment for such year.
- (3) Recording annually the contributions made by the account holder, individual and charitable contributors, and the state.
- (4) Submitting information regarding the IDA and account holders to the division as requested.

25.5(3) Additional evaluation criteria in the RFP. The division may include additional evaluation criteria in the RFP, including but not limited to the operating agency's ability to network with other agencies or to form a communitywide consortium of agencies, if desirable, to operate IDAs; ability to form an effective working relationship with banks or other financial institutions; and ability to raise funds to provide an independent match on account holder deposits.

25.5(4) Other considerations and guidelines. Other considerations and guidelines in implementing IDAs are:

a. The division shall have authority to designate and limit the number of locations where IDA projects shall be implemented, taking into account demographic characteristics and geographic considerations.

b. The division shall require all IDA operating organizations and projects to comply with any federal individual development account program requirements for drawing federal funding.

c. The division and the operating organization shall enter into an agreement that specifies the responsibilities of both parties. The agreement shall incorporate by reference the provisions of the RFP.

d. The operating organization shall maintain a clear and precise audit trail of all deposits and withdrawals of funds in IDAs. All withdrawals from an IDA shall require a signature of approval from the operating organization. Upon the termination of the agreement between the operating organization and the division or upon the discontinuance of the IDA program for any reason, the IDA accounts under the management of that operating organization shall terminate and the funds in the IDAs shall be distributed to the account holders, unless the operating organization and a successor operating organization located in the same geographic area and operating an IDA program approved by the division enter into an agreement for the transfer of IDA accounts to the successor operating organization. The division shall have authority to review and approve in advance the agreement between the two operating organizations.

e. Upon the termination of an operating organization's relationship with the financial institution holding its IDA accounts, the operating organization managing the accounts shall enter into an agreement with a division-approved successor financial institution to hold the accounts and shall arrange for the transfer of the accounts to the new financial institution. The new agreement shall be subject to the division's review and advance approval.

f. If an account holder moves within the state to a location that is not served by the operating organization but is served by another operating organization with a division-approved IDA program, the original operating organization shall arrange for the transfer of the account to a financial institution that has an agreement with the operating organization in the new location. If there is no operating organization in the new location, the IDA account shall be closed, with funds in the account distributed to the account holder; alternatively, the operating organization and the account holder may jointly agree to maintain the account under the management of the existing operating organization and financial institution. The operating organization shall provide a written notification to the division of all transfers of IDA accounts to the management of a new operating organization.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.6(541A) Authorized withdrawals of principal and income.

25.6(1) *Approved purposes for withdrawal of funds from an IDA.* An account holder may withdraw principal and income earned on principal from an IDA only with the written approval of the operating organization and only for the following approved purposes:

a. Educational costs at an accredited institution of higher education, which costs include, but are not limited to, tuition, laboratory fees or other fees for use of facilities, books, and other supplies.

b. Training costs for an accredited or licensed training program, or training program approved by the division, which costs include, but are not limited to, tuition, laboratory fees or other fees for use of facilities, books, and other supplies.

c. Purchase of a primary residence.

d. Capitalization of a small business start-up.

e. An improvement to a primary residence which increases the tax basis of the property.

f. Emergency medical costs for the account holder or for a member of the account holder's family. However, only one withdrawal from an IDA can be made for this purpose, and the amount of the withdrawal shall not exceed 10 percent of the account balance at the time of the withdrawal.

g. Purchase of an automobile.

h. Purchase of assistive technology, home or vehicle modification, or other device or physical improvement to assist an account holder or family member with a disability.

25.6(2) *Conditions on withdrawals of principal and income.* An account holder may withdraw funds from the account holder's IDA subject to the following conditions:

a. Any amount of principal and income earned on principal, provided the sum is authorized under subrule 25.6(1) and in accordance with the procedure for authorized withdrawals set forth under subrule 25.6(3).

b. If the account holder is 59½ years of age or older, any amount of principal and income earned on principal. Such withdrawals shall not require the approval of the operating organization.

25.6(3) Procedures for account holder deposits and withdrawals. The following procedures (or such other procedures as agreed upon by the operating organization and financial institution to facilitate authorized withdrawals) shall apply to account holder deposits and withdrawals from an IDA:

a. For deposits, the account holder shall fill out and sign a deposit form provided by the operating organization, indicating the amount and date of a deposit by the account holder into the IDA, and shall submit the form to the financial institution. The form shall be signed by the financial institution, which shall send copies to the account holder and the operating organization.

b. For a withdrawal, the account holder shall fill out and sign a withdrawal form provided by the operating organization, indicating the amount, date, and purpose of the withdrawal. The account holder shall submit the form to the operating organization or its designated agent for approval and signature. The operating organization shall retain a copy and submit the withdrawal form to the financial institution to implement the electronic transfer of the funds or issuance of a check, payable to the account of the vendor as payment for an approved purpose for the withdrawal; or, if neither electronic transfer nor check issuance is possible or cost-effective, then the financial institution shall issue a two-party payee check made out to the account holder and to the vendor. If the approved purpose is for capitalization of a small business, the check shall be payable to the account holder's business account at a financial institution and to the vendor requiring payment for providing the service or product relative to the account holder's business.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.7(541A) Notice of nonapproved withdrawals and closure of the account.

25.7(1) Nonapproved withdrawals and attempted withdrawals for nonapproved purposes. The financial institution shall notify the operating organization within five calendar days of any withdrawals or attempted withdrawals that appear to be nonapproved. The financial institution shall refuse to release any funds that do not have the written authorization of approval from the operating organization.

25.7(2) Closure of an IDA by the operating organization. The operating organization may close an IDA if the operating organization determines any of the following:

a. The account holder has withdrawn funds from the account for a purpose not authorized by subrule 25.6(1), or funds have been withdrawn under false pretenses and have been used for purposes other than for the approved purposes indicated at the time of the withdrawal.

b. There has been no activity in the IDA during the preceding 12 months.

c. The account holder has not complied with the terms of an IDA participation agreement between the account holder and the operating organization, after being provided notice of the requirement to comply with the agreement by the operating organization.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—25.8(541A) Transfers of assets of an IDA.

25.8(1) Transfers by an adult account holder. An adult account holder may transfer all or part of the assets in the adult account holder's IDA to any other account holder's IDA. Upon compliance by the operating organization and financial institution with the requirements of rule 421—25.6(541A), IDA account holders who have transferred funds into another individual's IDA account and any beneficiaries of the transferee's IDA account shall sign a waiver of liability form releasing the operating organization and the financial institution from civil liability and responsibility for the wrongful withdrawals of funds by the account holder due to the account holder's false representation of the purpose of the withdrawal, resulting in the loss to the account balance of deposited principal funds, including individual and charitable contributions, transferred funds, and the state match payments.

25.8(2) No transfers of assets from a minor account holder's IDA. Neither a minor account holder nor the parents or legal guardian of such minor account holder shall have the right or ability to transfer assets from the minor account holder's IDA to the IDA of any other account holder.

25.8(3) Transfers when the account holder dies. At the time an IDA is established, the account holder shall name a contingent beneficiary(ies) or an account holder transferee to whom the assets of the account

holder's IDA shall be transferred upon the account holder's death. Upon the account holder's death, the account assets shall be transferred to the named contingent beneficiary or to the transferee's IDA, as applicable. A named beneficiary or transferee may be changed at the discretion of the account holder. If the named beneficiary or transferee is deceased or otherwise does not accept the transfer, the assets of the deceased account holder's IDA shall be transferred to the IDA state match fund.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapter 541A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

TITLE III
DIVISION OF CRIMINAL AND JUVENILE JUSTICE PLANNING
CHAPTER 30
FUNCTIONS OF DIVISION

421—30.1(216A) Definitions. As used in these rules, unless the context otherwise requires:

“*Administrator*” means the administrator of the division of criminal and juvenile justice planning within the department of health and human services.

“*Council*” means an advisory council or board established in Iowa Code chapter 216A, subchapter VIII.

“*Department*” means the department of health and human services.

“*Director*” means the director of the department of health and human services.

“*Division*” means the division of criminal and juvenile justice planning within the department of health and human services.

“*Juvenile justice advisory council*” or “*JJAC*” means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive memorandum to oversee the administration of the Juvenile Justice and Delinquency Prevention Act (JJDP) formula grants in Iowa. [ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—30.2(216A,PL93-415) Functions of the division. The division of criminal and juvenile justice planning is under the direction of an administrator, who reports to the director. The division’s functions include identifying issues to improve the criminal and juvenile justice system through planning, research, data analysis, policy, youth development, and grant administration.

The functions of the division are described in Iowa Code chapter 216A, subchapter VIII.

30.2(1) The division shall provide staff support to the councils and the JJAC and shall assist them with the coordination of their efforts. Additionally, the division shall perform functions consistent with the duties and requirements outlined in Iowa Code chapter 216A, subchapter VIII; the Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; and other relevant federal and state requirements.

30.2(2) The division shall establish and maintain procedures to collect and report all instances of juvenile detention and confinement occurring in the state of Iowa consistent with P.L. 93-415, Section 223(a)(15). The monitoring function shall include the following:

a. The division shall collect relevant self-report information and perform on-site verification of data from jails, police lockups, juvenile detention facilities, state training schools, mental health institutes, locked residential treatment facilities for youth, and other secure facilities.

b. Through written agreement, the jail inspection unit of the department of corrections shall provide the division and the specific jails and lockups with certification of their ability to separate juveniles and adults, consistent with P.L. 93-415, Section 223(a)(12)(A).

c. Through written agreement, the department shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(11), in contracted private facilities that the department has the authority to license.

d. Through written agreement, the department shall provide information to the division on holdings relative to P.L. 93-415, Section 223(a)(11), in state institutions that the department administers.

30.2(3) Inquiries shall be directed to the department, the division, the councils, or the JJAC, at Lucas State Office Building, Des Moines, Iowa 50319. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays. The department’s telephone number is (515)242-5655, and its fax number is (515)242-6119. The department’s website is hhs.iowa.gov.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—30.3(216A) Functions and activity of the councils. The councils are established by Iowa Code chapter 216A, subchapter VIII, and are charged with the responsibility to identify and analyze justice system issues of concern; develop and assist others in implementing recommendations and plans for system improvement; and provide for a clearinghouse of justice system information to coordinate with data resource agencies and to assist others in the use of justice system data. The councils shall advise

the division on its administration of state and federal grants and appropriations and shall carry out other functions consistent with Iowa Code chapter 216A, subchapter VIII.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—30.4(216A,PL93-415) Functions and activities of the JJAC. The JJAC is established through executive memorandum pursuant to P.L. 93-415 to advise the division on juvenile justice issues; make recommendations to the governor and legislature; review and comment on the division's reporting of Iowa's compliance with the requirements of P.L. 93-415, Sections 223(a)(11), (12), (13), (14) and (23); advise the division on its administration of state and federal grants and appropriations; supervise the division's administration of federal funds received from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) established in P.L. 93-415; and carry out other functions consistent with P.L. 93-415. [ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—30.5(216A,PL93-415) Council and JJAC meetings.

30.5(1) Notice of meetings of councils and the JJAC shall be published 24 hours in advance of the meeting and will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas shall be available by mail from the division to any interested persons if requested not less than five days in advance of the meeting. All meetings shall be open to the public unless a closed session is voted by two-thirds of the entire membership or by all members present for one of the reasons specified in Iowa Code section 21.5. Special or electronic meetings may be called by the chairperson upon a finding of good cause and shall be held in accordance with Iowa Code section 21.8. Meetings of councils and the JJAC shall be governed by the following procedures:

a. Persons wishing to appear before a council or the JJAC shall submit the request to the respective council not less than five days prior to the meeting. Presentations may be made at the discretion of the respective chairperson and only upon matters appearing on the agenda.

b. Persons wishing to submit written material shall do so at least five days in advance of the scheduled meeting to ensure that council or JJAC members have adequate time to receive and evaluate the material.

c. At the conclusion of each meeting, the time, date, and place of the next meeting shall be set unless the next meeting was previously scheduled and announced.

d. Cameras and recording devices may be used at open meetings provided they do not obstruct the meeting. The chairperson may request a person using such a device to discontinue its use when it is obstructing the meeting. If the person fails to comply with this request, the presiding officer shall order that person excluded from the meeting.

e. The chairperson may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

f. Other meeting protocol and procedures consistent with this subrule and Iowa Code chapter 21 may be established by the councils or the JJAC through bylaws approved by a majority of the members subject to the bylaws.

30.5(2) Minutes of council or JJAC meetings are prepared and are available for inspection at the division office during business hours. Upon approval by the respective council or JJAC, the minutes will be posted on the division's website.

30.5(3) The councils or JJAC may form committees to carry out those duties as are assigned by the respective council. Meetings of the committees shall conform to the conditions listed in subrule 30.5(1) governing council and JJAC meetings.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapter 17A; Iowa Code chapter 216A, subchapter VIII; and P.L. 93-415.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 31
JUVENILE JUSTICE YOUTH DEVELOPMENT PROGRAM

[Prior to 12/29/21, see 428—Chapter 3]

421—31.1(216A,232) Definitions. As used in this chapter:

“Administrator” means the administrator of the division of criminal and juvenile justice planning within the department of health and human services.

“Applicant” means a city, county, judicial district or other designated eligible entity preparing and submitting an application for funding through this program.

“Application” means a request to the division for funding that complies with federal and state requirements.

“Decategorization,” as established in Iowa Code section 232.188, means the department’s program whereby approved counties are permitted to pool their allocations of designated state and federal child welfare and juvenile justice funding streams, establish local planning and governance structures, and design and implement service systems that are more effective in meeting local needs.

“Decategorization governance board” means the board required to provide direction and governance for a decategorization project, pursuant to Iowa Code section 232.188.

“Division” means the division of criminal and juvenile justice planning within the department of health and human services.

“Formula-based allocation” means a process that uses a formula to determine funding amounts to units of government or local public planning entities on a statewide basis.

“Grant review committee” means a committee established by the JJAC, the councils, or the division to review and rank applications for funding. Individuals who are not members of the JJAC or the councils may serve on this committee.

“Justice Research and Statistics Association” or *“JRSA”* is a national nonprofit organization that provides a clearinghouse of current information on state criminal justice research, programs, and publications.

“Juvenile justice advisory council” or *“JJAC”* means the state advisory group described in P.L. 93-415, Section 223(a)(3), and established through executive memorandum to oversee the administration of the JJDPA formula grants in Iowa.

“Juvenile Justice and Delinquency Prevention Act” or *“JJDPA”* means the federal Act, P.L. 93-415.

“Law enforcement expenditures” means the expenditures associated with police, prosecutorial, legal, and judicial services, and corrections as reported by the units of local government to the U.S. Census Bureau during the census of governments.

“Local public planning entities” means entities that have a local governance structure to plan, develop and coordinate services for children and families, and provide for implementation of services for children and families. Examples of local public planning entities include, but are not limited to, units of local government such as cities or counties, decategorization governance boards, community empowerment area boards, and school districts.

“Office of Juvenile Justice and Delinquency Prevention” or *“OJJDP”* means the federal office within the U.S. Department of Justice that administers the JJDPA and other discretionary grants.

“Subgrantee” means any applicant receiving funds through the juvenile justice youth development program from the division.

“Unit of local government” means a county, township, city, or political subdivision of a county, township, or city that is a unit of local government as determined by the Secretary of Commerce for general statistical purposes, and the recognized governing body of an Indian tribe that carries out substantial governmental duties and powers.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.2(216A,232) Purpose and goals.

31.2(1) The purpose of the juvenile justice and youth development program is to assist the state in the establishment and operation of juvenile crime prevention programs; provide for greater accountability in the juvenile justice system; promote positive youth development; and comply with

the JJDP core requirements regarding the deinstitutionalization of status offenders, sight and sound separation of adults and juveniles in secure facilities, prohibitions on the use of adult jails to hold juveniles, and the disproportionate confinement of minority youth.

31.2(2) The primary goal of the coordinated juvenile justice and prevention program is to promote positive youth development by helping communities provide their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster healthy and nurturing environments that support the growth and development of productive and responsible citizens. Other specific goals of this program are to reduce youth violence, truancy, involvement in criminal gangs, substance abuse and other delinquent behavior.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.3(216A,232,PL93-415) Program funding distribution.

31.3(1) The division shall distribute funds available for this program through the following methods:

- a. Competitive grants.
- b. Formula-based allocations.
- c. Sole source contracts.

31.3(2) Funding through any of the methods listed in subrule 31.3(1) may be on an annual or multiyear basis.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.4(216A,232,PL93-415) Competitive grants.

31.4(1) *Application announcement.* The department shall announce through public notice the opening of any competitive grant application process. The announcement shall provide potential applicants with information that describes eligibility conditions, purposes for which the program funding shall be available, application procedures, and all relevant time frames established for proposal submittal and review, grant awards, and grant expenditure periods.

31.4(2) *Preapplication.* The division may request potential applicants to submit a preapplication summary of their proposals. If a preapplication is required, the division shall provide all potential applicants with sufficient information detailing the extent of the preapplication and the criteria for review. Preapplications received in a timely manner shall be presented to the grant review committee for screening. The committee shall use the same ranking system for each preapplication. The ranking system shall be based on the criteria provided to the applicant through the division activities specified in subrule 31.4(1). Applicants shall be notified in writing of the screening decisions.

31.4(3) *Content of applications.* Required elements of the applications shall be published in the request for applications and shall be based on a point system established by the division that reflects the requirements of federal and state funding sources. The division shall develop the application and selection criteria.

31.4(4) *Application review and selection process.* The division shall conduct a preliminary review of each application to ensure that the applicant is eligible and the application is complete. All applications that are submitted in a timely manner by eligible applicants and contain the necessary information shall be presented to the grant review committee. Members of the grant review committee shall review each application and shall assign numerical scores to each application using criteria and point values established by the division and listed in the request for applications. The rank order of scores assigned to the applications by the review committee shall be the basis for funding recommendations for each application reviewed. The grant review committee shall forward its funding recommendations for approval and final award decisions pursuant to rule 421—31.7(216A,232,PL93-415). Decisions to make final awards shall be consistent with applicable state and federal program requirements.

31.4(5) *Conflict of interest.* Persons shall not serve on the grant review committee or otherwise participate personally through decisions, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which funds administered by the division are used when, to the person's knowledge, the person or a member of the person's immediate family, a partner, an organization in which the person is serving as

an officer, director, trustee, partner, or employee or any person or organization with whom the person is negotiating or has any arrangement concerning prospective employment, or has a financial interest of less than an arms-length transaction. If a person's agency or organization submits an application, the person shall not be present when the grant review committee's recommendations are acted upon by the JJAC or the councils.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.5(216A,232,PL93-415) Formula-based allocations.

31.5(1) *Funding recipients.* Only units of local government, local public planning entities, and judicial districts may be considered eligible applicants to receive funding through this distribution method. The determination of which units of local government, local public planning entities, and judicial districts are eligible applicants shall be made according to the state or federal law or regulation that makes funding available to the division for this distribution method. When such a determination is not established in law or regulation, the department shall make the determination with the advice of the appropriate council or the JJAC.

31.5(2) *Formula to determine individual allocation amounts.* Allocation amounts to individual units of local government or local public planning entities shall be calculated according to the state or federal law or regulation that makes funding available to the division for this distribution method. When an allocation formula for funding to be distributed by the division is not established in this chapter or other law or regulation, the division shall calculate allocations based on a formula determined by the department. The formula shall be based on the number of children residing in the respective areas and may also be based on poverty rates, delinquency rates and other data relevant to child and family well-being. Application materials provided to the eligible units of local government, local public planning entities, or judicial districts shall specify the formula used to calculate the allocation.

31.5(3) *Application procedures and requirements.*

a. Each unit of local government, local public planning entity, or judicial district that is eligible to be an applicant for funds pursuant to subrule 31.5(1) shall be contacted by the division and provided an application that must be completed by the applicant prior to the applicant's receipt of the allocation.

b. The application may require the submission of a comprehensive plan to prevent and reduce juvenile crime that reflects the purposes and goals in rule 421—31.2(216A,232) and that structures the coordination and collaboration of other relevant community programs and activities. Evidence of such coordination and collaboration may be required to include assurances and documentation that the plan for this program was developed to include, or be an integral part of, other areawide plans related to, for example, child welfare, substance abuse, health, or education.

c. The application may require documentation that the application was completed with the participation of representatives from, for example, law enforcement, county attorneys, county and city governments, and health, human services, education, and community service agencies.

d. The application may also require the applicant to certify and make assurances regarding policies and practices related to, but not limited to, funding eligibility, program purposes, service delivery and planning and administration capacities.

e. Each notified applicant shall submit the required information by the deadline established and announced by the division. The division reserves the right to extend the deadline.

f. Following its receipt and approval of a completed application, the division shall offer the applicant a contract authorizing the obligation of funds. These rules and all applicable state and federal laws and regulations shall become part of the contract by reference.

31.5(4) *Allocations declined, waived or combined.*

a. As allowed by federal or state law, when an eligible local public planning entity, judicial district, or unit of local government declines to submit an application for funds, such funds shall be retained by the division to be reallocated among all participating units of local government, judicial districts, or local public planning entities or to be otherwise distributed for the development of services that have a statewide impact.

b. As allowed by federal or state law, the division may permit an eligible unit of local government to waive its right to a direct allocation and request that its allocation be awarded to and expended for its benefit by a larger or contiguous unit of local government or local public planning entity. A written waiver shall be required from the unit of local government that waives its right to a direct allocation and names a requested unit of local government or local public planning entity to receive and expend the funds. The unit of local government, judicial district, or local public planning entity receiving the funds must agree, in writing, to accept the redirected funds, to carry out all planning and application requirements and to serve as the fiscal agent for receiving the waived allocation. The division's instructions to eligible applicants shall describe the procedures required to implement this paragraph.

c. As allowed by federal or state law, the division may permit applicants to enter into regional coalitions by planning for and utilizing combined allocations from the participating units of local government or local public planning entities. A unit of local government, judicial district, or local public planning entity shall serve as the applicant and fiscal agent for purposes of carrying out planning and application requirements, and for receiving the allocation and obligating and expending funds for the benefit of the combined units. The division's instructions to eligible applicants shall describe the process to implement this paragraph.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.6(216A,232,PL93-415) Sole source contracts. The division may determine, because of the nature of a certain problem or desired programmatic response, that a competitive grant or formula-based allocation process would not be the most appropriate or expeditious process through which to award funds. In such cases, the division may seek out a potential subgrantee with which it can develop a sole source contract for services. The division shall be alert to organizational conflicts of interest and noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. The division's awarding and administration of any sole source contract shall be governed by all relevant state and federal laws and regulations.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.7(216A,232,PL93-415) Program funding sources and related provisions.

31.7(1) Sources of funding may include state, federal, and other funds made available to the division for the purpose of assisting units of local government, judicial districts, and local public planning entities in improving the criminal and juvenile justice systems. The division may combine funding from federal and state appropriations and grant programs to distribute through any of the methods outlined in rule 421—31.3(216A,232,PL93-415), as allowable by the sources of the funds.

31.7(2) Other funds. With the advice of the JJAC and the councils, the division shall, consistent with applicable state and federal law and regulation, determine the distribution methods, eligible applicants and any allocation formulas to be used when making such funding available.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.8(216A,232) Appeals.

31.8(1) Applicants choosing to appeal funding decisions must file a written appeal with the department within ten calendar days of the written notification of the program's funding decisions.

31.8(2) All letters of appeal shall clearly state the reason(s) for the appeal and evidence of the reason(s) stated. Reason(s) for appeal must be based on a contention that the rules and procedures governing the funding process have not been applied properly. All appeals must clearly state in what manner the division failed to follow the rules of the selection process as governed by these administrative rules or procedures outlined in the application materials provided to all applicants by the division. The letter of appeal must also describe the remedy being sought.

31.8(3) If an appeal is filed within the ten calendar days, the division shall not enter into a contract with any applicant involved in the application process being appealed until the department has reviewed and decided on all appeals received in accordance with the criteria in subrules 31.8(1) and 31.8(2). The department shall consider the information submitted by the appellant and relevant information from

division staff when conducting the review. The review shall be conducted as expeditiously as possible so that all funds can be distributed in a timely manner.

31.8(4) The decision of the department shall represent the final division action for the purpose of implementing Iowa Code chapter 17A.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.9(216A,232) Contract agreement.

31.9(1) *Contract offer.* Applicants shall be notified in writing of the division's intent to fund, contingent upon the funds available. The department shall have flexibility in determining which state and federal funds shall be utilized in awards and allocations to subgrantees. These rules and all applicable state and federal laws and regulations shall become a part of the contract by reference.

31.9(2) *Preaward negotiation.* The applicant may be requested to modify the original application in the negotiation process. The division reserves the right to fund all or part of the applicant's application.

31.9(3) *Withdrawal of contract offer.* If the applicant and the division are unable to successfully negotiate a contract, the division may withdraw the award offer and redistribute program funds in a manner consistent with the provisions of rule 421—31.14(216A,232).

31.9(4) *Contract modifications.* The subgrantee or the division may request a modification or revision of the contract.

31.9(5) *Reimbursement of expenditures.* Funds are to be spent to meet program goals as provided in the contract. Expenditures shall be reimbursed pursuant to regular reimbursement procedures of the state of Iowa.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.10(216A,232) Contract termination.

31.10(1) *Termination by subgrantee.* The contract may be terminated by the subgrantee at any time during the contract period by giving 30 days' notice to the division.

31.10(2) *Termination by the division.*

a. The division may terminate a contract upon ten days' notice when the subgrantee or any of its subcontractors fail to comply with the grant award stipulations, standards or conditions. The division may terminate a contract upon 30 days' notice when there is a reduction of funds by executive order.

b. Termination for convenience. The performance of work under the contract may be terminated by the division in accordance with this clause in whole or, from time to time, in part whenever the division shall determine that such termination is in the best interest of the state. The division shall pay all reasonable costs associated with the contract that the subgrantee has incurred up to the date of termination. The division shall not pay for any work that has not been done prior to the date of termination.

c. Termination for default. If the subgrantee fails to fulfill its obligations under this contract properly or on time, or otherwise violates any provision of this contract, the division may terminate the contract by written notice to the subgrantee. The notice shall specify the acts of commission or omission relied on as cause for termination. All finished or unfinished products and services provided by the subgrantee shall, at the option of the division, become the state's property. The division shall pay the subgrantee fair and equitable compensation for satisfactory performance prior to receipt of notice of termination.

31.10(3) *Responsibility of subgrantee at termination.* Within 45 days of the termination, the subgrantee shall supply the division with a financial statement detailing all costs up to the effective date of the termination.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.11(216A,232) Required reports.

31.11(1) Expenditure claim reports shall be required from subgrantees on provided forms. The division, pursuant to regular reimbursement procedures of the state of Iowa, shall reimburse subgrantees for actual expenditures specified in the approved budget.

31.11(2) Progress reports on program outcomes, program status and financial status shall be required from subgrantees on provided forms.

31.11(3) Other reports, including audit reports prepared by independent auditors, may be required by the division and specified in the request for applications or contract to assist in the monitoring and evaluation of programs.

31.11(4) Failure to submit required reports by the due date shall result in suspension of financial payments to the subgrantee by the division until such time as the reports are received. No new awards shall be made for continuation programs where there are delinquent reports from prior grants.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.12(216A,232) Subgrantee records. Financial records, supporting documents, statistical records, and all other records pertinent to the program shall be retained by the subgrantee in accordance with the following:

31.12(1) Records for any project shall be retained for three years after final closeout and audit procedures are completed and accepted by the division.

31.12(2) Representatives of the state auditor's office and the division shall have access to all books, accounts, documents, and other property belonging to or in use by a subgrantee pertaining to the receipt of funds under these rules.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.13(216A,232) Allowable costs and cost restrictions.

31.13(1) Grant funds from this program shall be used to support only those activities and services specified and agreed to in the contract between the subgrantee and the division. The contract shall identify specific cost categories against which all allowable costs must be consistently charged.

31.13(2) Funds appropriated for this program shall not be expended for supplantation of federal, state, or local funds supporting existing programs or activities. Instructions for the application and acceptance of competitive grants, formula-based allocations, and sole source contracts may specify other cost limitations, including but not limited to costs related to political activities, interest costs, fines, penalties, lawsuits or legal fees, and certain fixed assets and program equipment.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.14(216A,232) Redistribution of funds. The division reserves the right to recapture and redistribute awarded funds based upon projected expenditures if it appears that funds shall not be expended by a subgrantee according to the conditions of the subgrantee's contract. Recaptured funds may be granted by the department to other applicants or subgrantees for services and activities consistent with the purposes and goals of the program.
[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—31.15(216A,232) Compliance with state and federal laws. In acceptance of a grant, the subgrantee shall agree to comply with all applicable state and federal rules and laws, including but not limited to the JJDPA.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—31.16(216A,232) Immunity of state and agencies. The subgrantee shall defend and hold harmless the state and any federal funding source for the state from liability arising from the subgrantee's performance or attempted performance of its contract, and the subgrantee's activities with subcontractors and all other third parties.
[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapter 17A; Iowa Code chapter 216A, subchapter VIII; P.L. 93-415; and P.L. 105-119.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

TITLE IV
DIVISION OF COMMUNITY ADVOCACY AND SERVICES
CHAPTER 40
FUNCTIONS OF DIVISION

421—40.1(216A) Definitions. As used in these rules, unless context otherwise requires:

“Administrator” means the administrator of the division of community advocacy and services, which is composed of the following offices:

1. Office of Latino affairs.
2. Office on the status of women.
3. Office of deaf services.
4. Office on the status of African Americans.
5. Office of Asian and Pacific Islander affairs.
6. Office of Native American affairs.
7. Office of persons with disabilities.

“Commission” means the following commissions established in Iowa Code chapter 216A:

1. Commission of Latino affairs.
2. Commission on the status of women.
3. Commission of deaf services.
4. Commission on the status of African Americans.
5. Commission of Asian and Pacific Islander affairs.
6. Commission of Native American affairs.
7. Commission of persons with disabilities.

“Commissioner” means a member of one of the commissions, appointed by the governor, and subject to confirmation by the senate pursuant to Iowa Code section 2.32.

“Department” means the department of health and human services.

“Division” means the division of community advocacy and services within the department of health and human services.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—40.2(216A) Functions of the division. The division of community advocacy and services is under the direction of an administrator, who is appointed by and reports to the director of the department. The functions and responsibilities of the division and respective commissions are described in Iowa Code chapter 216A.

40.2(1) The department will assign members of the division to meet the responsibilities of each office and to assist corresponding commissions with their efforts. Commission assistance shall be provided by coordinating meetings as required in Iowa Code sections 216A.12, 216A.53, 216A.74, 216A.113, 216A.142, 216A.152, and 216A.162; providing public notice as required in the open meetings law, Iowa Code chapter 21; maintaining commission meeting records; providing data and information on programs, rules and laws which impact or serve Iowans who identify with groups represented by the offices in the division; updating the commission website in accordance with department guidelines; and reporting on division and office results, policies and processes at meetings.

40.2(2) The division will focus on achieving long-term economic, social and cultural equity for Iowans who identify with groups represented by the offices in the division. To ascertain key needs and areas of focus, the division will assess relevant data, create opportunities for Iowans who identify with groups represented by the offices in the division to connect with one another, and with state government, to raise concerns and suggest workable solutions. This will be accomplished by holding regular listening sessions, providing leadership development opportunities, and facilitating community engagement. The division will actively engage commissioners in these initiatives.

40.2(3) The division will provide assistance, training and consultation to state departments and agencies to enhance services that allow underrepresented populations to participate fully in the economic, social, and cultural life of the state.

40.2(4) The division will use its knowledge of programming and information clearinghouse to provide assistance for Iowans who identify with groups represented by the offices in the division. Direct assistance consists of the following:

- a.* Connecting Iowans with state departments, agencies and other organizations that provide the specific services, expertise or knowledge necessary to meet their needs.
- b.* Training or assisting Iowans to self-advocate with state and local government when possible.
- c.* Enhancing statewide and local knowledge of existing services and programs available for Iowans who identify with groups represented by the offices in the division.
- d.* Communicating about and advocating for the needs and the value to Iowa's economy, culture and society of Iowans who identify with groups represented by the offices in the division.

40.2(5) The division will work in collaboration with statewide and local organizations to assess the availability and accessibility of state and local services for Iowans who identify with groups represented by the offices in the division and shall identify gaps in available services, collect data relevant to the work of the division, make recommendations for improvements, and develop and facilitate the implementation of improvements when necessary. Time may be allocated by the division to develop, coordinate and assist statewide and local organizations when the provision of that coordination or assistance is determined to be in alignment with the department's or division's strategic plan, and staff resources are available.

40.2(6) The division will provide assistance to develop, coordinate and assist other organizations. This may include providing division members to serve on committees, boards or working groups; to assist in creating strategic plans or action plans; to speak at events or deliver training; and to provide information about the perspective and needs of members of underrepresented groups. Time may be allocated by the division to develop, coordinate and assist other public organizations when the provision of that coordination or assistance is determined to be in alignment with the department's or division's strategic plan, and staff resources are available.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—40.3(216A) Organization of the commissions.

40.3(1) Each commissioner is an equal voting member of the commission on which the commissioner serves. A majority of the members shall constitute a quorum, and the affirmative vote of the majority is necessary for any substantive action taken by the commission.

40.3(2) Commissions shall appoint officers to serve two-year terms by voting at a commission meeting held in the first quarter of each even-numbered fiscal year. To qualify to serve as an officer, a commissioner must have at least two years remaining in the commissioner's term of appointment to one of the commissions. Commissions may appoint officers to positions as provided in Iowa Code sections 216A.12, 216A.53, 216A.74, 216A.113, 216A.142, 216A.152, and 216A.162. The roles of officer positions that are filled by commissions include, but are not limited to, the following:

- a.* Chairperson. This member shall establish the draft agenda, chair each commission meeting, and work with the division to establish a meeting schedule and communicate with members of the commission on which the chairperson serves to ensure a quorum at commission meetings.
- b.* Vice chairperson. This member shall work with the chairperson to establish the draft agenda and chair commission meetings in the absence of the chairperson.

40.3(3) Commissions shall appoint a member to serve as a voting member of the human rights board to serve a four-year term. Commissioners who are members of the human rights board shall serve their appointed term on the board unless a majority of a commission votes to appoint a new member to represent the commission on the human rights board, or the appointed commissioner is no longer able to serve or is no longer a member of a commission.

40.3(4) To carry out its duties, a commission may establish an advisory committee, work group, or other coalition composed of any combination of the following: members of the division, members of the public, and commissioners from its own commission or from other commissions within the division. The establishment of an advisory committee, work group or coalition requires a majority affirmative vote of the membership of the commission, including the identification of a commissioner who will facilitate the work of the committee, group or coalition. Advisory committees, work groups and coalitions may

make recommendations to the commission. Enactment of those recommendations requires a majority affirmative vote of the membership of the commission. Advisory committees shall include a facilitating member who is also a member of a commission. The facilitating member shall report on committee, work group or coalition meetings at regularly scheduled commission meetings and via electronic updates that shall be public record as required in the open records law, Iowa Code chapter 22.

40.3(5) Any member of a commission shall be deemed to have submitted a resignation if the member does not attend three or more consecutive commission meetings or if the member attends less than one half of the scheduled meetings held within any 12-month calendar period.

40.3(6) A member of the division or the administrator shall attend each meeting of the commissions to provide information and assistance in accordance with subrule 40.2(1).

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—40.4(216A) Meetings of the commissions.

40.4(1) Commissions shall meet as required by Iowa Code sections 216A.12, 216A.53, 216A.74, 216A.113, 216A.142, 216A.152, and 216A.162. No later than October 1, commissions shall establish and make public an annual schedule of required meetings for the following calendar year. A commission may alter its schedule with an affirmative vote of the majority of the members of the commission. The public shall be notified of alterations to the schedule within two business days of the official vote for alteration. A commission may hold additional special meetings with an affirmative vote of a majority of the membership of the commission. All meetings, including special meetings, shall be public meetings unless a closed session is approved pursuant to Iowa Code section 21.5. All official commission communication shall include each member of the commission, including the ex officio member, and the administrator.

40.4(2) Meeting agendas shall be posted as required by Iowa Code section 21.4. Meeting agendas will be available on the department website at least 24 hours in advance of the meeting unless the meeting meets criteria established in Iowa Code section 21.4 for an emergency meeting. Minutes of the meeting will be posted on the department website upon approval by the commission.

40.4(3) Members of the public attending a commission meeting shall request any necessary reasonable accommodations for their attendance at least five business days in advance of the scheduled meeting. Accommodations requested after this time frame will be made if reasonably possible. Accommodations may be made using appropriate services at the discretion of the department, with consideration of the needs of the public in attendance.

40.4(4) All commission meetings shall provide an opportunity for public comment. Commissions shall not limit public comment to persons who have preregistered with the commission. All members of the public addressing the commission shall be present at the meeting in person or via conference call or provide written comments. All members of the public addressing the commission in person, via conference call or in writing shall provide their full name, mailing address or other appropriate information to allow future correspondence, and city and state of residence. Commissions may limit the duration of public comment in total or per individual. The time and duration of public comment will be published on the meeting agenda at least 24 hours in advance of the meeting. The chairperson, vice chairperson, director, administrator, or member of the division may exclude any person from the meeting for comments or behavior that disrupts or obstructs the meeting.

40.4(5) Members of the public requesting to be placed on the commission agenda for a specific topic and duration shall make that request in person, by phone, by email or via the U.S. postal service to the commission chairperson or the division no later than three business days in advance of the commission meeting. The chairperson shall accept or deny a request and shall inform the individual making the request and the division of the decision no later than two business days in advance of the meeting using the same method of communication through which the request was received, followed by a written confirmation via U.S. postal service. The chairperson has sole discretion to accept or deny a request to appear on the agenda; however, denial of a scheduled time on the agenda does not preclude a member of the public from participating in the public comment portion of a meeting.

40.4(6) Substantial alterations to a published draft commission agenda shall be subject to an affirmative vote of the majority of a commission.

40.4(7) Positions of the commission, and publicly communicated messages regarding those positions from the commission, require an affirmative vote of the majority of a commission in a public meeting.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

421—40.5(216A) Functions of commissions.

40.5(1) Commissions shall focus on achieving long-term economic, social and cultural equity for Iowans who identify with groups represented by the commission.

40.5(2) Biennial recommendations. To ascertain key needs and areas of focus, commissions shall provide insight and input regarding the changing needs of Iowans who identify with groups represented by the commission. This will be accomplished by assessing available data, participating in division-sponsored listening sessions or sponsoring additional listening sessions; and using this and other information to compile and present biennial policy and program recommendations to the department, board, legislature and governor by October 15 of each even-numbered year. The division shall compile all recommendations on behalf of the commissions into one document for presentation to the department, board, legislature and governor by November 15 of each even-numbered year. Commissions may offer more frequent recommendations with an affirmative vote of the majority of a commission.

[ARC 6101C, IAB 12/29/21, effective 2/2/22]

These rules are intended to implement Iowa Code chapters 17A and 216A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 41
HALL OF FAME

[Prior to 12/29/21, see 435—Chapter 3 for the Iowa Women’s Hall of Fame]

421—41.1(216A) Iowa Women’s Hall of Fame.

41.1(1) Purpose. The purpose of the Iowa Women’s Hall of Fame shall be to recognize significant achievements of Iowa women and to educate the public by identifying those whose efforts have enhanced and improved the quality of life for women in Iowa, the community, state, nation or world, or a particular profession or discipline.

41.1(2) Committee. The Iowa Women’s Hall of Fame committee shall consist of three commissioners of the commission on the status of women, one serving as the committee chairperson; two public members appointed by the committee chairperson; and the chairperson of the commission on the status of women as an ex officio member.

41.1(3) Selection procedure. The committee shall solicit nominations for the Iowa Women’s Hall of Fame. The committee shall recommend to the commission on the status of women for its approval no more than four individuals to be inducted into the Iowa Women’s Hall of Fame. The committee shall plan the ceremony and reception each year for the Iowa Women’s Hall of Fame.

41.1(4) Cristine Wilson Medal for Equality and Justice. The Cristine Wilson Medal for Equality and Justice shall memorialize the efforts and accomplishments of the commission on the status of women’s first chairperson. The medal is awarded on an intermittent basis to persons whose work is deemed outstanding and a significant contribution to Iowa’s recognition as a state characterized by equality and justice. The Iowa Women’s Hall of Fame committee shall make recommendations to the commission for persons to receive this award.

41.1(5) Nomination forms and deadlines. Nomination forms and deadlines shall be posted on the department’s website at hhs.iowa.gov.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

421—41.2(216A) Iowa Latino Hall of Fame.

41.2(1) Purpose. The purpose of the Iowa Latino Hall of Fame shall be to recognize and honor outstanding Iowa Latinos that have contributed their talents and skills to improve the quality of life in Iowa and to provide visible examples for tomorrow’s Latino leaders.

41.2(2) Committee. The Iowa Latino Hall of Fame committee shall consist of three commissioners of the commission of Latino affairs, one serving as the committee chairperson; two public members selected by the commission of Latino affairs; and the chairperson of the commission of Latino affairs as an ex officio member.

41.2(3) Selection procedure. The committee shall solicit nominations for the Iowa Latino Hall of Fame. The committee shall recommend to the commission of Latino affairs for its approval no more than three individuals to be inducted into the Iowa Latino Hall of Fame, one individual for the Robert D. Ray Award for Equity and Justice, and one individual for the Iowa Latinx Youth Leadership Award. The committee shall plan the ceremony and reception each year for the Iowa Latino Hall of Fame.

41.2(4) Robert D. Ray Award for Equity and Justice. The Robert D. Ray Award for Equity and Justice shall recognize and honor the efforts and accomplishments of non-Latino and Latino Iowans. The award is awarded to persons whose work is deemed outstanding and a significant contribution to the equity and justice for Iowa’s new immigrants. The Iowa Latino Hall of Fame committee shall make recommendations to the commission for persons to receive this award.

41.2(5) Iowa Latinx Youth Leadership Award. The Latinx Youth Leadership Award is awarded to an Iowa Latinx youth or young professional who is making a difference in that individual’s community.

41.2(6) Nomination forms and deadlines. Nomination forms and deadlines shall be posted on the department’s website at hhs.iowa.gov.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code chapters 17A and 216A.

[Filed ARC 6101C (Notice ARC 6004C, IAB 10/20/21), IAB 12/29/21, effective 2/2/22]

[Editorial change: IAC Supplement 6/28/23]

HUMAN SERVICES DEPARTMENT[441]

Rules transferred from Social Services Department[770] to Human Services Department[498],
see 1983 Iowa Acts, Senate File 464, effective July 1, 1983.

Rules transferred from agency number [498] to [441] to conform with the reorganization
numbering scheme in general, IAC Supp. 2/11/87.

TITLE I

GENERAL DEPARTMENTAL PROCEDURES

CHAPTER 1

DEPARTMENTAL ORGANIZATION AND PROCEDURES

- 1.1(17A) Director
- 1.2(17A) Council
- 1.3(17A) Organization at state level
- 1.4(17A) Field operations structure
- 1.5 Reserved
- 1.6(17A) Mental health and developmental disabilities commission
- 1.7(17A) Governor's developmental disabilities council (governor's DD council)
- 1.8(17A,217) Waivers of administrative rules (hereinafter referred to as exceptions to policy)
- 1.9 Reserved
- 1.10(17A,514I) HAWK-I board

CHAPTER 2

CONTRACTING OUT DEPARTMENT OF HUMAN SERVICES
EMPLOYEES AND PROPERTY

- 2.1(23A,225C) Definitions
- 2.2(23A,225C) Contracts for use of the services of department employees
- 2.3(23A,225C) Contract provisions
- 2.4(23A,225C) Leasing of space at state institutions
- 2.5(23A,225C) Requirements prior to leasing

CHAPTER 3

DEPARTMENT PROCEDURE FOR RULE MAKING

- 3.1(17A) Applicability
- 3.2(17A) Advice on possible rules before notice of proposed rule adoption
- 3.3(17A) Public rule-making docket
- 3.4(17A) Notice of proposed rule making
- 3.5(17A) Public participation
- 3.6(17A) Regulatory analysis
- 3.7(17A,25B) Fiscal impact statement
- 3.8(17A) Time and manner of rule adoption
- 3.9(17A) Variance between adopted rule and published notice of proposed rule adoption
- 3.10(17A) Concise statement of reasons
- 3.11(17A) Contents, style, and form of rule
- 3.12(17A) Department rule-making record
- 3.13(17A) Filing of rules
- 3.14(17A) Effectiveness of rules prior to publication
- 3.15(17A) Review by department of rules

CHAPTER 4

PETITIONS FOR RULE MAKING

- 4.1(17A) Petition for rule making
- 4.2(17A) Briefs
- 4.3(17A) Inquiries
- 4.4(17A) Agency consideration

CHAPTER 5
DECLARATORY ORDERS

5.1(17A)	Petition for declaratory order
5.2(17A)	Notice of petition
5.3(17A)	Intervention
5.4(17A)	Briefs
5.5(17A)	Inquiries
5.6(17A)	Service and filing of petitions and other papers
5.7(17A)	Consideration
5.8(17A)	Action on petition
5.9(17A)	Refusal to issue order
5.10(17A)	Contents of declaratory order—effective date
5.11(17A)	Copies of orders
5.12(17A)	Effect of a declaratory order

CHAPTER 6
WAIVERS OF HEALTH AND HUMAN SERVICES
ADMINISTRATIVE RULES

6.1(17A,135)	Waivers
6.2(17A,217)	Sample petition for waiver

CHAPTER 7
APPEALS AND HEARINGS

7.1(17A)	Definitions
7.2(17A)	Governing law and regulations

DIVISION I
GENERAL APPEALS PROCESS

7.3(17A)	When a contested case hearing will be granted
7.4(17A)	Initiating an appeal
7.5(17A)	How to request an appeal
7.6(17A)	Prehearing procedures
7.7(17A)	Timelines for contested case hearings
7.8(17A)	Contested case hearing procedures
7.9(17A)	Miscellaneous rules governing contested case hearings
7.10(17A)	Proposed decision
7.11(17A)	Director's review
7.12(17A)	Final decisions
7.13(17A)	Expedited review
7.14(17A)	Effect
7.15(17A)	Calculating time
7.16(17A)	Authorized representatives
7.17(17A)	Continuation and reinstatement of benefits
7.18(17A)	Emergency adjudicative proceedings
7.19(17A)	Supplemental Nutrition Assistance Program (SNAP) administrative disqualification hearings
7.20 to 7.40	Reserved

DIVISION II
APPEALS BASED ON THE COMPETITIVE PROCUREMENT BID PROCESS

7.41(17A)	Scope, bidder and applicability
7.42(17A)	Requests for timely filing of an appeal
7.43(17A)	Bidder appeals
7.44(17A)	Procedures for bidder appeal

7.45(17A)	Stay of agency action for bidder appeal
7.46(17A)	Request for review of the proposed decision
7.47(17A)	Other procedural considerations
7.48(17A)	Appeal record
7.49(17A)	Pleadings
7.50(17A)	Ex parte communications
7.51(17A)	Right of judicial review

CHAPTER 8

PAYMENT OF SMALL CLAIMS

8.1(217)	Authorization to reimburse
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CHAPTER 9

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

9.1(17A,22)	Definitions
9.2(17A,22)	Statement of policy
9.3(17A,22)	Requests for access to records
9.4(17A,22)	Access to confidential records
9.5(17A,22)	Requests for treatment of a record as a confidential record and its withholding from examinations
9.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
9.7(17A,22,228)	Consent to disclosure by the subject of a confidential record
9.8(17A,22)	Notice to suppliers of information
9.9(17A,22)	Release to subject
9.10(17A,22)	Use and disclosure without consent of the subject
9.11(22)	Availability of records
9.12(22,252G)	Personally identifiable information
9.13(217)	Distribution of informational materials
9.14(17A,22)	Special policies and procedures for protected health information
9.15(17A,22)	Person who may exercise rights of the subject
9.16(22)	Personally identifiable information—human rights programs
9.17(22)	Personally identifiable information—child advocacy board
9.18(17A,22)	Personally identifiable information—aging programs
9.19(17A,22)	Availability of records—volunteer service commission
9.20(17A,22)	Personally identifiable information—public health programs

CHAPTER 10

Reserved

CHAPTER 11

COLLECTION OF PUBLIC ASSISTANCE DEBTS

11.1(217)	Definitions
11.2(217)	Establishment of claim
11.3(217)	Application of payment
11.4(217)	Setoff against state income tax refund, rebate, or other state payments, including, for example, state employee wages
11.5(234)	Setoff against federal income tax refund or other federal payments, including, for example, federal employee wages

CHAPTER 12

Reserved

CHAPTER 13
PROGRAM EVALUATION

- 13.1(234,239B,249A,514I) Definitions
- 13.2(234,239B,249A,514I) Review of public assistance records by the department
- 13.3(234,239B,249A,514I) Who shall be reviewed
- 13.4(234,239B,249A,514I) Notification of review
- 13.5(234,239B,249A,514I) Review procedure
- 13.6(234) Failure to cooperate
- 13.7(234,239B,249A,514I) Report of findings
- 13.8(234,237A,239B,249A,514I) Federal rereview

CHAPTERS 14 and 15
Reserved

CHAPTER 16
NOTICES

- 16.1(17A) Definitions
- 16.2(17A) Governing laws and regulations
- 16.3(17A) Notices

TITLE II

CHAPTERS 17 to 21
Reserved

TITLE III
MENTAL HEALTH

CHAPTER 22
AUTISM SUPPORT PROGRAM

- 22.1(225D) Definitions
- 22.2(225D) Eligibility and application requirements
- 22.3(225D) Cost-sharing requirements and graduated schedule of cost sharing
- 22.4(225D) Review of financial eligibility, cost-sharing requirements, exemption from cost sharing, and disenrollment in the program
- 22.5(225D) Initial service authorization and renewal of service authorization
- 22.6(225D) Provider network
- 22.7(225D) Financial management of the program
- 22.8(225D) Appeal

CHAPTER 23
Reserved

CHAPTER 24
ACCREDITATION OF PROVIDERS OF SERVICES TO PERSONS WITH MENTAL ILLNESS,
INTELLECTUAL DISABILITIES, OR DEVELOPMENTAL DISABILITIES

DIVISION I
SERVICES FOR INDIVIDUALS WITH DISABILITIES

- 24.1(225C) Definitions
- 24.2(225C) Standards for policy and procedures
- 24.3(225C) Standards for organizational activities
- 24.4(225C) Standards for services
- 24.5(225C) Accreditation
- 24.6(225C) Deemed status (all services)
- 24.7(225C) Complaint process (all services)

24.8(225C)	Appeal procedure
24.9(225C)	Exceptions to policy
24.10 to 24.19	Reserved

DIVISION II
CRISIS RESPONSE SERVICES

24.20(225C)	Definitions
24.21(225C)	Standards for crisis response services
24.22(225C)	Standards for policies and procedures
24.23(225C)	Standards for organizational activities
24.24(225C)	Standards for crisis response staff
24.25(225C)	Standards for services
24.26(225C)	Accreditation
24.27(225C)	Deemed status
24.28(225C)	Complaint process
24.29(225C)	Appeal procedure
24.30(225C)	Exceptions to policy
24.31(225C)	Standards for individual crisis response services
24.32(225C)	Crisis evaluation
24.33(225C)	Twenty-four-hour crisis response
24.34(225C)	Twenty-four-hour crisis line
24.35(225C)	Warm line
24.36(225C)	Mobile response
24.37(225C)	Twenty-three-hour crisis observation and holding
24.38(225C)	Crisis stabilization community-based services (CSCBS)
24.39(225C)	Crisis stabilization residential services (CSRS)
24.40(225C)	Medication—administration, storage and documentation
24.41 to 24.49	Reserved

DIVISION III
COMMUNITY MENTAL HEALTH CENTERS

24.50(230A)	Definitions
24.51(230A)	Community mental health center designation
24.52(230A)	Standards for policies and procedures
24.53(230A)	Standards for organizational activities
24.54(230A)	Standards for core services and supports
24.55(230A)	Accreditation of community mental health centers

CHAPTER 25
DISABILITY SERVICES MANAGEMENT

DIVISION I
REGIONAL SERVICES

25.1(331)	Definitions
25.2(331)	Core service domains
25.3	Reserved
25.4(331)	Access standards
25.5(331)	Practices
25.6(331)	Intensive mental health services
25.7(331)	Non-core services
25.8 to 25.10	Reserved

DIVISION II
REGIONAL SERVICE SYSTEM

25.11(331)	Definitions
25.12(331)	Regional governance structure

25.13(331)	Regional finances
25.14(331)	Regional governance agreement
25.15(331)	Eligibility, diagnosis, and functional assessment criteria
25.16(331)	Financial eligibility requirements
25.17(331)	Exempted counties
25.18(331)	Annual service and budget plan
25.19(331)	Annual service and budget plan approval
25.20(331)	Annual report
25.21(331)	Policies and procedures manual for the regional service system
25.22(225C)	Incentive fund application, approval, and reporting
25.23(331)	Performance-based contract
25.24 to 25.40	Reserved

DIVISION III
MINIMUM DATA SET

25.41(331)	Minimum data set
25.42 to 25.50	Reserved

DIVISION IV
MENTAL HEALTH ADVOCATES

25.51(229)	Definitions
25.52(229)	Advocate appointment and qualifications
25.53(229)	Advocate assignment
25.54(229)	Advocate responsibilities
25.55(229)	County responsibilities
25.56(229)	Data collection requirements
25.57(229)	Quality assurance system

CHAPTERS 26 and 27
Reserved

CHAPTER 28
POLICIES FOR MENTAL HEALTH
INSTITUTES AND RESOURCE CENTERS

28.1(218)	Definitions
28.2(218)	Selection of facility
28.3	Reserved
28.4(225C,229)	Grievances
28.5(217,218)	Photographing and recording of individuals and use of cameras
28.6(217,218)	Interviews and statements
28.7(218)	Use of grounds, facilities, or equipment
28.8(218)	Tours of facility
28.9(218)	Donations
28.10 and 28.11	Reserved
28.12(217)	Release of confidential information
28.13(218)	Applying county institutional credit balances

CHAPTER 29
MENTAL HEALTH INSTITUTES

29.1(218,229)	Voluntary admissions
29.2(229,230)	Certification of county of residence
29.3(218,230)	Charges for care
29.4(229)	Authorization for treatment
29.5(217,228,229)	Rights of individuals
29.6(218)	Visiting

CHAPTER 30
STATE RESOURCE CENTERS

30.1(218,222)	Catchment areas
30.2(218,222)	Admission
30.3(222)	Non-Medicaid payment-eligible individuals
30.4(222)	Liability for support
30.5(217,218,225C)	Rights of individuals
30.6(218)	Visiting

CHAPTER 31
CIVIL COMMITMENT UNIT FOR SEXUAL OFFENDERS

31.1(229A)	Definitions
31.2(229A)	Visitation
31.3(229A)	Group visitation
31.4(229A)	Grievances
31.5(229A)	Photographing and recording individuals
31.6(229A)	Release of information
31.7(229A)	Communication with individuals
31.8(229A)	Building and grounds
31.9(8,218)	Gifts and bequests
31.10(229A)	Cost of care

CHAPTERS 32 and 33
Reserved

CHAPTER 34
ALTERNATIVE DIAGNOSTIC FACILITIES

34.1(225C)	Definitions
34.2(225C)	Function
34.3(225C)	Standards

CHAPTER 35
Reserved

CHAPTER 36
FACILITY ASSESSMENTS

DIVISION I
ASSESSMENT FEE FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH AN INTELLECTUAL DISABILITY

36.1(249A)	Assessment of fee
36.2(249A)	Determination and payment of fee
36.3	Reserved
36.4(249A)	Termination of fee assessment
36.5	Reserved

DIVISION II
QUALITY ASSURANCE ASSESSMENT FOR NURSING FACILITIES

36.6(249L)	Assessment
36.7(249L)	Determination and payment of assessment
36.8 and 36.9	Reserved

DIVISION III
HEALTH CARE ACCESS ASSESSMENT FOR HOSPITALS

36.10(249M)	Application of assessment
36.11(249M)	Determination and payment of assessment
36.12(249M)	Termination of health care access assessment

CHAPTER 37

Reserved

CHAPTER 38

DEVELOPMENTAL DISABILITIES BASIC STATE GRANT

- 38.1(225C,217) Definitions
- 38.2(225C,217) Program eligibility
- 38.3(225C,217) Contracts
- 38.4(225C,217) Conflict of interest policy

CHAPTER 39

Reserved

TITLE IV

FAMILY INVESTMENT PROGRAM

CHAPTER 40

APPLICATION FOR AID

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

- 40.1 to 40.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

- 40.21(239B) Definitions
- 40.22(239B) Application
- 40.23(239B) Date of application
- 40.24(239B) Procedure with application
- 40.25(239B) Time limit for decision
- 40.26(239B) Effective date of grant
- 40.27(239B) Continuing eligibility
- 40.28(239B) Referral for investigation

CHAPTER 41

GRANTING ASSISTANCE

DIVISION I

FAMILY INVESTMENT PROGRAM—
CONTROL GROUP

- 41.1 to 41.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

- 41.21(239B) Eligibility factors specific to child
- 41.22(239B) Eligibility factors specific to payee
- 41.23(239B) Home, residence, citizenship, and alienage
- 41.24(239B) Promoting independence and self-sufficiency through employment job opportunities and basic skills (PROMISE JOBS) program
- 41.25(239B) Uncategorized factors of eligibility
- 41.26(239B) Resources
- 41.27(239B) Income
- 41.28(239B) Need standards
- 41.29(239B) Composite FIP/SSI cases
- 41.30(239B) Time limits

CHAPTER 42

Reserved

CHAPTER 43
ALTERNATE PAYEES

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

43.1 to 43.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

43.21(239B) Conservatorship or guardianship

43.22 and 43.23 Reserved

43.24(239B) Emergency payee

CHAPTER 44

Reserved

CHAPTER 45

PAYMENT

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

45.1 to 45.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

45.21(239B) Issuing payment

45.22(239B) Return

45.23(239B) Held warrants

45.24(239B) Underpayment

45.25(239B) Deceased payees

45.26(239B) Limitation on payment

45.27(239B) Rounding of need standard and payment amount

CHAPTER 46

OVERPAYMENT RECOVERY

DIVISION I

FAMILY INVESTMENT PROGRAM—CONTROL GROUP

46.1 to 46.20 Reserved

DIVISION II

FAMILY INVESTMENT PROGRAM—TREATMENT GROUP

46.21(239B) Definitions

46.22(239B) Monetary standards

46.23(239B) Notification and appeals

46.24(239B) Determination of overpayments

46.25(239B) Source of recoupment

46.26 Reserved

46.27(239B) Procedures for recoupment

46.28 Reserved

46.29(239B) Fraudulent misrepresentation of residence

CHAPTER 47

DIVERSION INITIATIVES

DIVISION I

PROMOTING AWARENESS OF THE BENEFITS OF A HEALTHY MARRIAGE

47.1(234) Eligibility criteria

47.2(234) Notice and eligibility period

47.3 to 47.20 Reserved

DIVISION II
FAMILY SELF-SUFFICIENCY GRANTS PROGRAM

- 47.21(239B) Definitions
- 47.22(239B) Availability of the family self-sufficiency grants program
- 47.23(239B) General criteria
- 47.24(239B) Assistance available in family self-sufficiency grants
- 47.25(239B) Application, notification, and appeals
- 47.26(239B) Approved local plans for family self-sufficiency grants
- 47.27(239B) Evaluation of family self-sufficiency grants
- 47.28(239B) Recovery of FSSG overpayments

CHAPTERS 48 and 49
Reserved

TITLE V
STATE SUPPLEMENTARY ASSISTANCE

CHAPTER 50
APPLICATION FOR ASSISTANCE

- 50.1(249) Definitions
- 50.2(249) Application procedures
- 50.3(249) Approval of application and effective date of eligibility
- 50.4(249) Reviews
- 50.5(249) Application under conditional benefits

CHAPTER 51
ELIGIBILITY

- 51.1(249) Application for other benefits
- 51.2(249) Supplementation
- 51.3(249) Eligibility for residential care
- 51.4(249) Dependent relatives
- 51.5(249) Residence
- 51.6(249) Eligibility for supplement for Medicare and Medicaid eligibles
- 51.7(249) Income from providing room and board
- 51.8(249) Furnishing of social security number
- 51.9(249) Recovery

CHAPTER 52
PAYMENT

- 52.1(249) Assistance standards

CHAPTER 53
Reserved

CHAPTER 54
FACILITY PARTICIPATION

- 54.1(249) Application and contract agreement
- 54.2(249) Maintenance of case records
- 54.3(249) Payments for residential care facilities
- 54.4(249) Goods and services provided
- 54.5(249) Personal needs account
- 54.6(249) Case activity report
- 54.7(249) Billing procedures

TITLE VI
GENERAL PUBLIC ASSISTANCE PROVISIONS

CHAPTERS 55 and 56

Reserved

CHAPTER 57

INTERIM ASSISTANCE REIMBURSEMENT

- 57.1(249) Definitions
- 57.2(249) Requirements for reimbursement
- 57.3(249) Certificate of authority

CHAPTERS 58 and 59

Reserved

CHAPTER 60

REFUGEE CASH ASSISTANCE

- 60.1(217) Alienage requirements
- 60.2(217) Application procedures
- 60.3(217) Effective date of grant
- 60.4(217) Accepting other assistance
- 60.5(217) Eligibility factors
- 60.6(217) Students in institutions of higher education
- 60.7(217) Time limit for eligibility
- 60.8(217) Criteria for exemption from registration for employment services, registration,
and refusal to register
- 60.9(217) Work and training requirements
- 60.10(217) Uncategorized factors of eligibility
- 60.11(217) Temporary absence from home
- 60.12(217) Application
- 60.13(217) Continuing eligibility
- 60.14(217) Alternate payees
- 60.15(217) Payment
- 60.16(217) Overpayment recovery

CHAPTER 61

REFUGEE SERVICES PROGRAM

- 61.1(217) Definitions
- 61.2(217) Authority
- 61.3(217) Eligibility for refugee services
- 61.4(217) Planning and coordinating the placement of refugees in advance of their arrival
- 61.5(217) Services of the department available for refugees
- 61.6(217) Provision of services
- 61.7(217) Application for services
- 61.8(217) Adverse service actions
- 61.9(217) Client appeals
- 61.10 to 61.12 Reserved
- 61.13(217) Refugee resettlement moneys
- 61.14(217) Unaccompanied refugee minors program
- 61.15 and 61.16 Reserved
- 61.17(217) Targeted assistance grants

CHAPTER 62
RENT REIMBURSEMENT

62.1(425)	Eligible claimants
62.2(425)	Dual claims
62.3(425)	Multipurpose building
62.4(425)	Income
62.5(425)	Simultaneous homesteads
62.6(425)	Confidential information
62.7(425)	Mobile, modular, and manufactured homes
62.8(425)	Totally disabled
62.9(425)	Nursing homes
62.10(425)	Household
62.11(425)	Homestead
62.12(425)	Household income
62.13(425)	Timely filing of claims
62.14(425)	Separate homestead—spousal rent reimbursements
62.15(425)	Gross rent/rent constituting property taxes paid
62.16(425)	Leased land
62.17(425)	Property: taxable status
62.18(425)	Income: spouse
62.19(425)	Common law marriage
62.20(425)	Deceased claimant
62.21(425)	Audit of claim
62.22(425)	Extension of time for filing a claim
62.23(425)	Annual adjustment factor
62.24(425)	Proration of claims
62.25(425)	Unreasonable hardship
62.26(425)	Appeal

CHAPTERS 63 and 64
Reserved

TITLE VII
FOOD PROGRAMS

CHAPTER 65
SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM ADMINISTRATION

DIVISION I

65.1(234)	Definitions
65.2(234)	Application
65.3(234)	Administration of program
65.4(234)	Issuance
65.5(234)	Simplified reporting
65.6(234)	Delays in certification
65.7	Reserved
65.8(234)	Deductions
65.9(234)	Treatment centers and group living arrangements
65.10	Reserved
65.11(234)	Discrimination complaint
65.12(234)	Appeals
65.13(234)	Joint processing
65.14	Reserved
65.15(234)	Proration of benefits

65.16(234)	Complaint system
65.17(234)	Involvement in a strike
65.18 and 65.19	Reserved
65.20(234)	Notice of expiration issuance
65.21(234)	Claims
65.22(234)	Verification
65.23(234)	Prospective budgeting
65.24(234)	Inclusion of foster children in household
65.25(234)	Effective date of change
65.26(234)	Eligible students
65.27(234)	Voluntary quit or reduction in hours of work
65.28(234)	Work requirements
65.29(234)	Income
65.30(234)	Resources
65.31(234)	Homeless meal providers
65.32(234)	Basis for allotment
65.33(234)	Dependent care deduction
65.34 to 65.36	Reserved
65.37(234)	Eligibility of noncitizens
65.38(234)	Income deductions
65.39(234)	Categorical eligibility
65.40	Reserved
65.41(234)	Actions on changes increasing benefits
65.42 and 65.43	Reserved
65.44(234)	Reinstatement
65.45	Reserved
65.46(234)	Disqualifications
65.47 to 65.49	Reserved
65.50(234)	No increase in benefits
65.51(234)	State income and eligibility verification system
65.52(234)	Systematic alien verification for entitlements (SAVE) program

CHAPTER 66

EMERGENCY FOOD ASSISTANCE PROGRAM

66.1(234)	Definitions
66.2(234)	Application to be a TEFAP contractor or subcontractor
66.3(234)	Contracts
66.4(234)	Distribution
66.5(234)	Household eligibility
66.6(234)	Reimbursement for allowable costs
66.7(234)	Commodity losses and claims
66.8(234)	State monitoring
66.9(234)	Limits on unrelated activities
66.10(234)	Complaints

CHAPTERS 67 to 72

Reserved

TITLE VIII
MEDICAL ASSISTANCE

CHAPTER 73
MANAGED CARE

73.1(249A)	Definitions
73.2(249A)	Contracts with a managed care plan (MCP)
73.3(249A)	Enrollment
73.4(249A)	Disenrollment process
73.5(249A)	MCP covered services
73.6(249A)	Amount, duration and scope of services
73.7(249A)	Emergency services
73.8(249A)	Access to service
73.9(249A)	Incident reporting
73.10(249A)	Discharge planning
73.11(249A)	Level of care assessment and annual reviews
73.12(249A)	Appeal of MCP actions
73.13(249A)	Appeal to department
73.14(249A)	Continuation of benefits
73.15(249A)	Grievances
73.16(249A)	Written record
73.17(249A)	Information concerning procedures relating to the review of MCP decisions and actions
73.18(249A)	Records and reports
73.19(249A)	Audits
73.20(249A)	Marketing
73.21(249A)	Enrollee education
73.22(249A)	Payment to the MCP
73.23(249A)	Claims payment by the MCP
73.24(249A)	Quality assurance
73.25(249A)	Certifications and program integrity

CHAPTER 74
IOWA HEALTH AND WELLNESS PLAN

74.1(249A,249N)	Definitions
74.2(249A,249N)	Eligibility factors
74.3(249A,249N)	Application
74.4(249A,249N)	Financial eligibility
74.5(249A,249N)	Enrollment period
74.6(249A,249N)	Reporting changes
74.7(249A,249N)	Reenrollment
74.8(249A,249N)	Terminating enrollment
74.9(249A,249N)	Recovery
74.10(249A,249N)	Right to appeal
74.11(249A)	Financial participation
74.12(249A)	Benefits and service delivery
74.13(249A,249N)	Claims and reimbursement methodologies
74.14(249A,249N)	Discontinuance of program

CHAPTER 75
CONDITIONS OF ELIGIBILITY

DIVISION I

GENERAL CONDITIONS OF ELIGIBILITY, COVERAGE GROUPS, AND SSI-RELATED PROGRAMS

75.1(249A)	Persons covered
75.2(249A)	Medical resources
75.3(249A)	Acceptance of other financial benefits
75.4(249A)	Medical assistance lien
75.5(249A)	Determination of countable income and resources for persons in a medical institution
75.6(249A)	Entrance fee for continuing care retirement community or life care community
75.7(249A)	Furnishing of social security number
75.8(249A)	Medical assistance corrective payments
75.9(249A)	Treatment of Medicaid qualifying trusts
75.10(249A)	Residency requirements
75.11(249A)	Citizenship or alienage requirements
75.12(249A)	Inmates of public institutions
75.13(249A)	Categorical relatedness
75.14(249A)	Establishing paternity and obtaining support
75.15(249A)	Disqualification for long-term care assistance due to substantial home equity
75.16(249A)	Client participation in payment for medical institution care
75.17(249A)	Verification of pregnancy
75.18(249A)	Continuous eligibility for pregnant women
75.19(249A)	Continuous eligibility for children
75.20(249A)	Disability requirements for SSI-related Medicaid
75.21(249A)	Health insurance premium payment (HIPP) program
75.22(249A)	AIDS/HIV health insurance premium payment program
75.23(249A)	Disposal of assets for less than fair market value after August 10, 1993
75.24(249A)	Treatment of trusts established after August 10, 1993
75.25(249A)	Definitions
75.26	Reserved
75.27(249A)	AIDS/HIV settlement payments
75.28(249A)	Recovery
75.29(249A)	Investigation by quality control or the department of inspections and appeals
75.30 to 75.49	Reserved

DIVISION II

ELIGIBILITY FACTORS SPECIFIC TO COVERAGE GROUPS RELATED TO
THE FAMILY MEDICAL ASSISTANCE PROGRAM (FMAP)

75.50(249A)	Definitions
75.51	Reserved
75.52(249A)	Continuing eligibility
75.53(249A)	Iowa residency policies specific to FMAP and FMAP-related coverage groups
75.54(249A)	Eligibility factors specific to child
75.55(249A)	Eligibility factors specific to specified relatives
75.56(249A)	Resources
75.57(249A)	Income
75.58(249A)	Need standards
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
75.60(249A)	Pending SSI approval
75.61 to 75.69	Reserved

DIVISION III
FINANCIAL ELIGIBILITY BASED ON MODIFIED ADJUSTED GROSS INCOME (MAGI)

- 75.70(249A) Financial eligibility based on modified adjusted gross income (MAGI)
75.71(249A) Income limits

CHAPTER 76
ENROLLMENT AND REENROLLMENT

- 76.1(249A) Definitions
76.2(249A) Application with the department
76.3(249A) Referrals from a health insurance marketplace
76.4(249A) Express lane eligibility
76.5(249A) Enrollment through SSI
76.6(249A) Referral for Medicare savings program
76.7(249A) Presumptive eligibility
76.8(249A) Applicant responsibilities
76.9(249A) Responsible persons and authorized representatives
76.10(249A) Right to withdraw the application
76.11(249A) Choice of electronic notifications
76.12(249A) Application not required
76.13(249A) Initial enrollment
76.14(249A) Reenrollment
76.15(249A) Report of changes
76.16(249A) Action on information received
76.17(249A) Automatic redetermination of eligibility

CHAPTER 77
CONDITIONS OF PARTICIPATION FOR PROVIDERS
OF MEDICAL AND REMEDIAL CARE

- 77.1(249A) Physicians
77.2(249A) Retail pharmacies
77.3(249A) Hospitals
77.4(249A) Dentists
77.5(249A) Podiatrists
77.6(249A) Optometrists
77.7(249A) Opticians
77.8(249A) Chiropractors
77.9(249A) Home health agencies
77.10(249A) Medical equipment and appliances, prosthetic devices and medical supplies
77.11(249A) Ambulance service
77.12(249A) Behavioral health intervention
77.13(249A) Hearing aid dispensers
77.14(249A) Audiologists
77.15(249A) Community mental health centers
77.16(249A) Screening centers
77.17(249A) Physical therapists
77.18(249A) Orthopedic shoe dealers and repair shops
77.19(249A) Rehabilitation agencies
77.20(249A) Independent laboratories
77.21(249A) Rural health clinics
77.22(249A) Psychologists
77.23(249A) Maternal health centers
77.24(249A) Ambulatory surgical centers
77.25(249A) Home- and community-based habilitation services

77.26(249A)	Behavioral health services
77.27(249A)	Birth centers
77.28(249A)	Area education agencies
77.29(249A)	Case management provider organizations
77.30(249A)	HCBS health and disability waiver service providers
77.31(249A)	Occupational therapists
77.32(249A)	Hospice providers
77.33(249A)	HCBS elderly waiver service providers
77.34(249A)	HCBS AIDS/HIV waiver service providers
77.35(249A)	Federally qualified health centers
77.36(249A)	Advanced registered nurse practitioners
77.37(249A)	Home- and community-based services intellectual disability waiver service providers
77.38(249A)	Assertive community treatment
77.39(249A)	HCBS brain injury waiver service providers
77.40(249A)	Lead inspection agencies
77.41(249A)	HCBS physical disability waiver service providers
77.42(249A)	Public health agencies
77.43(249A)	Infant and toddler program providers
77.44(249A)	Local education agency services providers
77.45(249A)	Indian health facilities
77.46(249A)	HCBS children's mental health waiver service providers
77.47(249A)	Health home services providers
77.48(249A)	Speech-language pathologists
77.49(249A)	Physician assistants
77.50(249A)	Ordering and referring providers
77.51(249A)	Child care medical services
77.52(249A)	Community-based neurobehavioral rehabilitation services
77.53(249A)	Qualified Medicare beneficiary (QMB) providers
77.54(249A)	Health insurance premium payment (HIPP) providers
77.55(249A)	Crisis response services
77.56(249A)	Subacute mental health services
77.57(249A)	Pharmacists

CHAPTER 78

AMOUNT, DURATION AND SCOPE OF MEDICAL AND REMEDIAL SERVICES

78.1(249A)	Physicians' services
78.2(249A)	Prescribed outpatient drugs
78.3(249A)	Inpatient hospital services
78.4(249A)	Dentists
78.5(249A)	Podiatrists
78.6(249A)	Optometrists
78.7(249A)	Opticians
78.8(249A)	Chiropractors
78.9(249A)	Home health agencies
78.10(249A)	Durable medical equipment (DME), prosthetic devices and medical supplies
78.11(249A)	Ambulance service
78.12(249A)	Behavioral health intervention
78.13(249A)	Nonemergency medical transportation
78.14(249A)	Hearing aids
78.15(249A)	Orthopedic shoes

78.16(249A)	Community mental health centers
78.17(249A)	Physical therapists
78.18(249A)	Screening centers
78.19(249A)	Rehabilitation agencies
78.20(249A)	Independent laboratories
78.21(249A)	Rural health clinics
78.22(249A)	Family planning clinics
78.23(249A)	Other clinic services
78.24(249A)	Psychologists
78.25(249A)	Maternal health centers
78.26(249A)	Ambulatory surgical center services
78.27(249A)	Home- and community-based habilitation services
78.28(249A)	List of medical services and equipment requiring prior authorization, preprocedure review or preadmission review
78.29(249A)	Behavioral health services
78.30(249A)	Birth centers
78.31(249A)	Hospital outpatient services
78.32(249A)	Area education agencies
78.33(249A)	Case management services
78.34(249A)	HCBS health and disability waiver services
78.35(249A)	Occupational therapist services
78.36(249A)	Hospice services
78.37(249A)	HCBS elderly waiver services
78.38(249A)	HCBS AIDS/HIV waiver services
78.39(249A)	Federally qualified health centers
78.40(249A)	Advanced registered nurse practitioners
78.41(249A)	HCBS intellectual disability waiver services
78.42(249A)	Pharmacists providing covered vaccines
78.43(249A)	HCBS brain injury waiver services
78.44(249A)	Lead inspection services
78.45(249A)	Assertive community treatment
78.46(249A)	Physical disability waiver service
78.47(249A)	Pharmaceutical case management services
78.48(249A)	Public health agencies
78.49(249A)	Infant and toddler program services
78.50(249A)	Local education agency services
78.51(249A)	Indian health service 638 facility services
78.52(249A)	HCBS children's mental health waiver services
78.53(249A)	Health home services
78.54(249A)	Speech-language pathology services
78.55(249A)	Services rendered via telehealth
78.56(249A)	Community-based neurobehavioral rehabilitation services
78.57(249A)	Child care medical services
78.58(249A)	Qualified Medicare beneficiary (QMB) provider services
78.59(249A)	Health insurance premium payment (HIPP) provider services
78.60(249A)	Crisis response services
78.61(249A)	Subacute mental health services

CHAPTER 79
OTHER POLICIES RELATING TO PROVIDERS OF
MEDICAL AND REMEDIAL CARE

79.1(249A)	Principles governing reimbursement of providers of medical and health services
79.2(249A)	Sanctions
79.3(249A)	Maintenance of records by providers of service
79.4(249A)	Reviews and audits
79.5(249A)	Nondiscrimination on the basis of handicap
79.6(249A)	Provider participation agreement
79.7(249A)	Medical assistance advisory council
79.8(249A)	Requests for prior authorization
79.9(249A)	General provisions for Medicaid coverage applicable to all Medicaid providers and services
79.10(249A)	Requests for preadmission review
79.11(249A)	Requests for preprocedure surgical review
79.12(249A)	Advance directives
79.13(249A)	Requirements for enrolled Medicaid providers supplying laboratory services
79.14(249A)	Provider enrollment
79.15(249A)	Education about false claims recovery
79.16(249A)	Electronic health record incentive program
79.17(249A)	Requirements for prescribing controlled substances

CHAPTER 80
PROCEDURE AND METHOD OF PAYMENT

80.1	Reserved
80.2(249A)	Submission of claims
80.3(249A)	Payment from other sources
80.4(249A)	Time limit for submission of claims and claim adjustments
80.5(249A)	Authorization process
80.6(249A)	Payment to provider—exception
80.7(249A)	Health care data match program

CHAPTER 81
NURSING FACILITIES

DIVISION I
GENERAL POLICIES

81.1(249A)	Definitions
81.2	Reserved
81.3(249A)	Initial approval for nursing facility care
81.4(249A)	Arrangements with residents
81.5(249A)	Discharge and transfer
81.6(249A)	Financial and statistical report and determination of payment rate
81.7(249A)	Continued review
81.8	Reserved
81.9(249A)	Records
81.10(249A)	Payment procedures
81.11(249A)	Billing procedures
81.12(249A)	Closing of facility
81.13(249A)	Conditions of participation for nursing facilities
81.14(249A)	Audits
81.15	Reserved
81.16(249A)	Nurse aide requirements and training and testing programs

81.17	Reserved
81.18(249A)	Sanctions
81.19	Reserved
81.20(249A)	Out-of-state facilities
81.21(249A)	Outpatient services
81.22(249A)	Rates for Medicaid eligibles
81.23(249A)	State-funded personal needs supplement
81.24 to 81.30	Reserved

DIVISION II
ENFORCEMENT OF COMPLIANCE

81.31(249A)	Definitions
81.32(249A)	General provisions
81.33(249A)	Factors to be considered in selecting remedies
81.34(249A)	Available remedies
81.35(249A)	Selection of remedies
81.36(249A)	Action when there is immediate jeopardy
81.37(249A)	Action when there is no immediate jeopardy
81.38(249A)	Action when there is repeated substandard quality of care
81.39(249A)	Temporary management
81.40(249A)	Denial of payment for all new admissions
81.41(249A)	Secretarial authority to deny all payments
81.42(249A)	State monitoring
81.43(249A)	Directed plan of correction
81.44(249A)	Directed in-service training
81.45(249A)	Closure of a facility or transfer of residents, or both
81.46(249A)	Civil money penalties—basis for imposing penalty
81.47(249A)	Civil money penalties—when penalty is collected
81.48(249A)	Civil money penalties—notice of penalty
81.49(249A)	Civil money penalties—waiver of hearing, reduction of penalty amount
81.50(249A)	Civil money penalties—amount of penalty
81.51(249A)	Civil money penalties—effective date and duration of penalty
81.52(249A)	Civil money penalties—due date for payment of penalty
81.53(249A)	Use of penalties collected by the department
81.54(249A)	Continuation of payments to a facility with deficiencies
81.55(249A)	State and federal disagreements involving findings not in agreement when there is no immediate jeopardy
81.56(249A)	Duration of remedies
81.57(249A)	Termination of provider agreement

CHAPTER 82
INTERMEDIATE CARE FACILITIES FOR PERSONS
WITH AN INTELLECTUAL DISABILITY

82.1(249A)	Definition
82.2(249A)	Licensing and certification
82.3(249A)	Conditions of participation for intermediate care facilities for persons with an intellectual disability
82.4	Reserved
82.5(249A)	Financial and statistical report
82.6(249A)	Eligibility for services
82.7(249A)	Initial approval for ICF/ID care
82.8(249A)	Determination of need for continued stay
82.9(249A)	Arrangements with residents

82.10(249A)	Discharge and transfer
82.11 and 82.12	Reserved
82.13(249A)	Records
82.14(249A)	Payment procedures
82.15(249A)	Billing procedures
82.16(249A)	Closing of facility
82.17(249A)	Audits
82.18(249A)	Out-of-state facilities
82.19(249A)	State-funded personal needs supplement

CHAPTER 83 MEDICAID WAIVER SERVICES

DIVISION I—HCBS HEALTH AND DISABILITY WAIVER SERVICES

83.1(249A)	Definitions
83.2(249A)	Eligibility
83.3(249A)	Application
83.4(249A)	Financial participation
83.5(249A)	Redetermination
83.6(249A)	Allowable services
83.7(249A)	Service plan
83.8(249A)	Adverse service actions
83.9(249A)	Appeal rights
83.10 to 83.20	Reserved

DIVISION II—HCBS ELDERLY WAIVER SERVICES

83.21(249A)	Definitions
83.22(249A)	Eligibility
83.23(249A)	Application
83.24(249A)	Client participation
83.25(249A)	Redetermination
83.26(249A)	Allowable services
83.27(249A)	Service plan
83.28(249A)	Adverse service actions
83.29(249A)	Appeal rights
83.30(249A)	Enhanced services
83.31 to 83.40	Reserved

DIVISION III—HCBS AIDS/HIV WAIVER SERVICES

83.41(249A)	Definitions
83.42(249A)	Eligibility
83.43(249A)	Application
83.44(249A)	Financial participation
83.45(249A)	Redetermination
83.46(249A)	Allowable services
83.47(249A)	Service plan
83.48(249A)	Adverse service actions
83.49(249A)	Appeal rights
83.50 to 83.59	Reserved

DIVISION IV—HCBS INTELLECTUAL DISABILITY WAIVER SERVICES

83.60(249A)	Definitions
83.61(249A)	Eligibility
83.62(249A)	Application
83.63(249A)	Client participation

83.64(249A)	Redetermination
83.65	Reserved
83.66(249A)	Allowable services
83.67(249A)	Service plan
83.68(249A)	Adverse service actions
83.69(249A)	Appeal rights
83.70 and 83.71	Reserved
83.72(249A)	Rent subsidy program
83.73 to 83.80	Reserved

DIVISION V—BRAIN INJURY WAIVER SERVICES

83.81(249A)	Definitions
83.82(249A)	Eligibility
83.83(249A)	Application
83.84(249A)	Client participation
83.85(249A)	Redetermination
83.86(249A)	Allowable services
83.87(249A)	Service plan
83.88(249A)	Adverse service actions
83.89(249A)	Appeal rights
83.90 to 83.100	Reserved

DIVISION VI—PHYSICAL DISABILITY WAIVER SERVICES

83.101(249A)	Definitions
83.102(249A)	Eligibility
83.103(249A)	Application
83.104(249A)	Client participation
83.105(249A)	Redetermination
83.106(249A)	Allowable services
83.107(249A)	Individual service plan
83.108(249A)	Adverse service actions
83.109(249A)	Appeal rights
83.110 to 83.120	Reserved

DIVISION VII—HCBS CHILDREN'S MENTAL HEALTH WAIVER SERVICES

83.121(249A)	Definitions
83.122(249A)	Eligibility
83.123(249A)	Application
83.124(249A)	Financial participation
83.125(249A)	Redetermination
83.126(249A)	Allowable services
83.127(249A)	Service plan
83.128(249A)	Adverse service actions
83.129(249A)	Appeal rights

CHAPTER 84

EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT

84.1(249A)	Definitions
84.2(249A)	Eligibility
84.3(249A)	Screening services
84.4(249A)	Referral
84.5(249A)	Follow up

CHAPTER 85
SERVICES IN PSYCHIATRIC INSTITUTIONS

DIVISION I
PSYCHIATRIC HOSPITALS

- 85.1(249A) Acute care in psychiatric hospitals
- 85.2(249A) Out-of-state placement
- 85.3(249A) Eligibility of persons under the age of 21
- 85.4(249A) Eligibility of persons aged 65 and over
- 85.5(249A) Client participation
- 85.6(249A) Responsibilities of hospitals
- 85.7(249A) Psychiatric hospital reimbursement
- 85.8(249A,81GA,ch167) Eligibility of persons aged 21 through 64
- 85.9 to 85.20 Reserved

DIVISION II
PSYCHIATRIC MEDICAL INSTITUTIONS FOR CHILDREN

- 85.21(249A) Conditions for participation
- 85.22(249A) Eligibility of persons under the age of 21
- 85.23(249A) Client participation
- 85.24(249A) Responsibilities of facilities
- 85.25(249A) Reimbursement to psychiatric medical institutions for children
- 85.26(249A) Outpatient day treatment for persons aged 20 or under
- 85.27 to 85.40 Reserved

DIVISION III
NURSING FACILITIES FOR PERSONS WITH MENTAL ILLNESS

- 85.41(249A) Conditions of participation
- 85.42(249A) Out-of-state placement
- 85.43(249A) Eligibility of persons aged 65 and over
- 85.44(249A) Client participation
- 85.45(249A) Responsibilities of nursing facility
- 85.46(249A) Policies governing reimbursement
- 85.47(249A) State-funded personal needs supplement

CHAPTER 86
HEALTHY AND WELL KIDS IN IOWA (HAWKI) PROGRAM

- 86.1(514I) Definitions
- 86.2(514I) Eligibility factors
- 86.3(514I) Application process
- 86.4(514I) Coordination with Medicaid
- 86.5(514I) Effective date of coverage
- 86.6(514I) Selection of a plan
- 86.7(514I) Cancellation
- 86.8(514I) Premiums and copayments
- 86.9(514I) Annual reviews of eligibility
- 86.10(514I) Reporting changes
- 86.11(514I) Notice requirements
- 86.12(514I) Appeals and fair hearings
- 86.13 Reserved
- 86.14(514I) Covered services
- 86.15(514I) Participating health and dental plans
- 86.16(514I) Clinical advisory committee
- 86.17(514I) Use of donations to the hawki program
- 86.18(505) Health insurance data match program

- 86.19(514I) Recovery
- 86.20(514I) Supplemental dental-only coverage

CHAPTER 87
FAMILY PLANNING PROGRAM

- 87.1(217) Definitions
- 87.2(217) Eligibility
- 87.3(217) Enrollment
- 87.4(217) Effective date of eligibility
- 87.5(217) Period of eligibility
- 87.6(217) Reporting changes
- 87.7(217) Funding of family planning services program
- 87.8(217) Availability of services
- 87.9(217) Payment of covered services
- 87.10(217) Submission of claims
- 87.11(217) Providers eligible to participate

CHAPTER 88
SPECIALIZED MANAGED CARE PROGRAMS

DIVISION I
PREPAID HEALTH PLANS

- 88.1(249A) Definitions
- 88.2(249A) Participation
- 88.3(249A) Enrollment
- 88.4(249A) Disenrollment
- 88.5(249A) Covered services
- 88.6(249A) Emergency services
- 88.7(249A) Access to service
- 88.8(249A) Grievance procedures
- 88.9(249A) Records and reports
- 88.10(249A) Marketing
- 88.11(249A) Patient education
- 88.12(249A) Payment to the PHP
- 88.13(249A) Quality assurance
- 88.14 to 88.20 Reserved

DIVISION II
PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

- 88.21(249A) Scope and definitions
- 88.22(249A) PACE organization application and waiver process
- 88.23(249A) PACE program agreement
- 88.24(249A) Enrollment and disenrollment
- 88.25(249A) Program services
- 88.26(249A) Access to PACE services
- 88.27(249A) Program administrative requirements
- 88.28(249A) Payment

CHAPTER 89
DEBTS DUE FROM TRANSFERS OF ASSETS

- 89.1(249F) Definitions
- 89.2(249F) Creation of debt
- 89.3(249F) Exceptions
- 89.4(249F) Presumption of intent
- 89.5(249F) Notice of debt

- 89.6(249F) No timely request of a hearing
- 89.7(249F) Timely request for a hearing
- 89.8(249F) Department-requested hearing
- 89.9(249F) Filing and docketing of the order
- 89.10(249F) Exemption from Iowa Code chapter 17A

CHAPTER 90

CASE MANAGEMENT SERVICES

- 90.1(249A) Definitions
- 90.2(249A) Targeted case management
- 90.3(249A) Termination of targeted case management services
- 90.4(249A) Case management services
- 90.5(249A) Rights restrictions
- 90.6(249A) Documentation and billing
- 90.7(249A) Case management services provider requirements

CHAPTER 91

MEDICARE DRUG SUBSIDY

- 91.1(249A) Definitions
- 91.2(249A) Application
- 91.3(249A) Eligibility determination
- 91.4(249A) Notice of decision
- 91.5(249A) Effective date
- 91.6(249A) Changes in circumstances
- 91.7(249A) Reinvestigation
- 91.8(249A) Appeals

CHAPTER 92

Reserved

TITLE IX

WORK INCENTIVE DEMONSTRATION

CHAPTER 93

PROMISE JOBS PROGRAM

- 93.1(239B) Definitions
- 93.2(239B) Program administration
- 93.3(239B) Registration and referral
- 93.4(239B) The family investment agreement (FIA)
- 93.5(239B) Assessment
- 93.6(239B) Job readiness and job search activities
- 93.7(239B) Work activities
- 93.8(239B) Education and training activities
- 93.9(239B) Other FIA activities
- 93.10(239B) Required documentation and verification
- 93.11(239B) Supportive payments
- 93.12(239B) Recovery of PROMISE JOBS expense payments
- 93.13(239B) Resolution of participation issues
- 93.14(239B) Problems that may provide good cause for participation issues
- 93.15(239B) Right of appeal
- 93.16(239B) Resolution of a limited benefit plan
- 93.17(239B) Worker displacement grievance procedure

CHAPTER 94

Reserved

TITLE X

SUPPORT RECOVERY

CHAPTER 95

COLLECTIONS

95.1(252B)	Definitions
95.2(252B)	Child support recovery eligibility and services
95.3(252B)	Crediting of current and delinquent support
95.4(252B)	Prepayment of support
95.5(252B)	Lump sum settlement
95.6 to 95.12	Reserved
95.13(17A)	Appeals
95.14(252B)	Termination of services
95.15(252B)	Child support recovery unit attorney
95.16	Reserved
95.17(252B)	Effective date of support
95.18(252B)	Continued services available to canceled family investment program (FIP) or Medicaid recipients
95.19(252B)	Cooperation of public assistance recipients in establishing and obtaining support
95.20(252B)	Cooperation of public assistance applicants in establishing and obtaining support
95.21(252B)	Cooperation in establishing and obtaining support in nonpublic assistance cases
95.22(252B)	Charging pass-through fees
95.23(252B)	Reimbursing assistance with collections of assigned support
95.24(252B)	Child support account
95.25(252B)	Emancipation verification
95.26(17A)	Right of appeal
95.27(17A)	Appeal record

CHAPTER 96

INFORMATION AND RECORDS

96.1(252B)	Access to information and records from other sources
96.2(252B)	Refusal to comply with written request or subpoena
96.3(252B)	Procedure for refusal
96.4(252B)	Conference conducted
96.5(252B)	Fine assessed
96.6(252B)	Objection to fine or failure to pay
96.7(17A)	Right of appeal

CHAPTER 97

COLLECTION SERVICES CENTER

97.1(252B)	Definitions
97.2(252B)	Transfer of records and payments
97.3(252B)	Support payment records
97.4(252B)	Method of payment
97.5(252D)	Electronic transmission of payments
97.6(252B)	Authorization of payment
97.7(252B)	Processing misdirected payments
97.8(17A)	Right of appeal

CHAPTER 98
SUPPORT ENFORCEMENT SERVICES

DIVISION I
MEDICAL SUPPORT ENFORCEMENT

98.1(252E)	Definitions
98.2(252E)	Provision of services
98.3 and 98.4	Reserved
98.5(252E)	Health benefit plan information
98.6(252E)	Insurer authorization
98.7(252E)	Enforcement
98.8(252E)	Contesting the order
98.9 to 98.20	Reserved

DIVISION II
INCOME WITHHOLDING
PART A
DELINQUENT SUPPORT PAYMENTS

98.21(252D)	When applicable
98.22 and 98.23	Reserved
98.24(252D)	Amount of withholding
98.25(252D)	Amendment of amount of withholding due to hardship
98.26(252D)	Additional information about hardship
98.27 to 98.30	Reserved

PART B
IMMEDIATE INCOME WITHHOLDING

98.31(252D)	Effective date
98.32(252D)	Withholding automatic
98.33	Reserved
98.34(252D)	Approval of request for immediate income withholding
98.35	Reserved
98.36(252D)	Immediate income withholding amounts
98.37(252D)	Immediate income withholding amounts when current support has ended
98.38	Reserved

PART C
INCOME WITHHOLDING—GENERAL PROVISIONS

98.39(252D,252E)	Provisions for medical support
98.40(252D,252E)	Maximum amounts to be withheld
98.41(252D)	Multiple obligations
98.42(252D)	Notice to employer and obligor
98.43(252D)	Contesting the withholding
98.44(252D)	Termination of order
98.45(252D)	Modification of income withholding
98.46(252D)	Refunds of amounts improperly withheld
98.47(96)	Child support intercept of unemployment insurance benefits
98.48 to 98.50	Reserved

DIVISION III
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

98.51 to 98.60	Reserved
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DIVISION IV
PUBLICATION OF NAMES

98.61(252B)	List for publication
98.62(252B)	Releasing the list
98.63 to 98.70	Reserved

DIVISION V
ADMINISTRATIVE SEEK EMPLOYMENT ORDERS

98.71(252B)	Seek employment order
98.72(252B)	Effective date of order
98.73(252B)	Method and requirements of reporting
98.74(252B)	Reasons for noncompliance
98.75(252B)	Method of service
98.76(252B)	Duration of order
98.77 to 98.80	Reserved

DIVISION VI
OFFSET

98.81(252B)	Definitions
98.82(252B)	Offset against payment owed to a person by a state agency
98.83(252B)	Offset against state income tax refund or rebate
98.84(252B)	Offset against federal income tax refund and federal nontax payment
98.85 to 98.90	Reserved

DIVISION VII
ADMINISTRATIVE LEVY

98.91(252I)	Administrative levy
98.92	Reserved
98.93(252I)	Verification of accounts
98.94(252I)	Notice to financial institution
98.95(252I)	Notice to support obligor
98.96(252I)	Responsibilities of financial institution
98.97(252I)	Challenging the administrative levy
98.98 to 98.100	Reserved

DIVISION VIII
LICENSE SANCTION

98.101(252J)	Referral for license sanction
98.102(252J)	Reasons for exemption
98.103(252J)	Notice of potential sanction of license
98.104(252J)	Conference
98.105(252J)	Payment agreement
98.106(252J)	Staying the process due to full payment of support
98.107(252J)	Duration of license sanction
98.108 to 98.115	Reserved

DIVISION IX
CONSUMER REPORTING AGENCIES

98.116(252B)	Procedures for providing information to consumer reporting agencies
98.117 to 98.120	Reserved

DIVISION X
EXTERNAL ENFORCEMENT

98.121(252B)	Difficult-to-collect arrearages
98.122(252B)	Enforcement services by private attorney entitled to state compensation
98.123 to 98.130	Reserved

DIVISION XI
APPEALS

98.131(17A)	Right of appeal
98.132(17A)	Appeal record

CHAPTER 99
SUPPORT ESTABLISHMENT AND ADJUSTMENT SERVICES

DIVISION I
CHILD SUPPORT GUIDELINES

- 99.1(234,252B,252H) Income considered
- 99.2(234,252B) Allowable deductions
- 99.3(234,252B) Determining net income
- 99.4(234,252B) Applying the guidelines
- 99.5(234,252B) Deviation from guidelines
- 99.6 to 99.9 Reserved

DIVISION II
PATERNITY ESTABLISHMENT
PART A
JUDICIAL PATERNITY ESTABLISHMENT

- 99.10(252A) Temporary support
- 99.11 to 99.20 Reserved

PART B
ADMINISTRATIVE PATERNITY ESTABLISHMENT

- 99.21(252F) When paternity may be established administratively
- 99.22(252F) Mother's certified statement
- 99.23(252F) Notice of alleged paternity and support debt
- 99.24(252F) Conference to discuss paternity and support issues
- 99.25(252F) Amount of support obligation
- 99.26 Reserved
- 99.27(252F) Paternity contested
- 99.28(252F) Paternity test results challenge
- 99.29(252F) Agreement to entry of paternity and support order
- 99.30(252F) Entry of order establishing paternity only
- 99.31(252F) Exception to time limit
- 99.32(252F) Genetic test costs assessed
- 99.33 to 99.35 Reserved

PART C
PATERNITY DISESTABLISHMENT

- 99.36(598,600B) Definitions
- 99.37(598,600B) Communication between parents
- 99.38(598,600B) Continuation of enforcement
- 99.39(598,600B) Satisfaction of accrued support
- 99.40 Reserved

DIVISION III
ADMINISTRATIVE ESTABLISHMENT OF SUPPORT

- 99.41(252C) Establishment of an administrative order
- 99.42 to 99.60 Reserved

DIVISION IV
REVIEW AND ADJUSTMENT OF CHILD SUPPORT OBLIGATIONS

- 99.61(252B,252H) Definitions
- 99.62(252B,252H) Review of permanent child support obligations
- 99.63(252B,252H) Notice requirements
- 99.64(252B,252H) Financial information
- 99.65(252B,252H) Review and adjustment of a child support obligation
- 99.66(252B,252H) Medical support
- 99.67(252B,252H) Confidentiality of financial information
- 99.68(252B,252H) Payment of service fees and other court costs

- 99.69(252B,252H) Denying requests
- 99.70(252B,252H) Withdrawing requests
- 99.71(252H) Effective date of adjustment
- 99.72 to 99.80 Reserved

DIVISION V
ADMINISTRATIVE MODIFICATION

- 99.81(252H) Definitions
- 99.82(252H) Availability of service
- 99.83(252H) Modification of child support obligations
- 99.84(252H) Notice requirements
- 99.85(252H) Financial information
- 99.86(252H) Challenges to the proposed modification action
- 99.87(252H) Misrepresentation of fact
- 99.88(252H) Effective date of modification
- 99.89(252H) Confidentiality of financial information
- 99.90(252H) Payment of fees
- 99.91(252H) Denying requests
- 99.92(252H) Withdrawing requests
- 99.93 to 99.100 Reserved

DIVISION VI
SUSPENSION AND REINSTATEMENT OF SUPPORT
PART A

SUSPENSION BY MUTUAL CONSENT

- 99.101(252B) Definitions
- 99.102(252B) Availability of service
- 99.103(252B) Basis for suspension of support
- 99.104(252B) Request for assistance to suspend
- 99.105(252B) Order suspending support
- 99.106(252B) Suspension of enforcement of current support

PART B
SUSPENSION BY PAYOR'S REQUEST

- 99.107(252B) Definitions
- 99.108(252B) Availability of service
- 99.109(252B) Basis for suspension of support
- 99.110(252B) Request for assistance to suspend
- 99.111(252B) Determining eligibility for suspension
- 99.112(252B) Order suspending support
- 99.113(252B) Suspension of enforcement of current support

PART C
REINSTATEMENT OF SUPPORT

- 99.114(252B) Request for reinstatement
- 99.115(252B) Reinstatement
- 99.116(252B) Reinstatement of enforcement of support
- 99.117(252B) Temporary suspension becomes final
- 99.118 to 99.120 Reserved

DIVISION VII
APPEALS

99.121(17A) Right of appeal

CHAPTER 100

CHILD SUPPORT PROMOTING OPPORTUNITIES FOR PARENTS PROGRAM

100.1(252B) Definitions
 100.2(252B) Incentives
 100.3(252B) Establishment of designated providers
 100.4(252B) Selection of designated providers
 100.5(252B) Termination of designated providers
 100.6(252B) Reports and records
 100.7(252B) Receipt of incentives
 100.8(17A) Right of appeal

TITLE XI
CHILDREN'S INSTITUTIONS

CHAPTERS 101 and 102
Reserved

CHAPTER 103
STATE TRAINING SCHOOL

103.1(218) Definitions
 103.2(218) Admission
 103.3(218) Plan of care
 103.4(218) Communication with individuals
 103.5(218) Photographing and recording of individuals
 103.6(218) Employment of individual
 103.7(218) Temporary home visits
 103.8(218) Grievances
 103.9(692A) Sex offender registration
 103.10(218) Alleged child abuse
 103.11(233A) Cost of care
 103.12(218) Buildings and grounds
 103.13(8,218) Gifts and bequests

CHAPTER 104
Reserved

TITLE XII
LICENSING AND APPROVED STANDARDS

CHAPTER 105
JUVENILE DETENTION
AND SHELTER CARE HOMES

105.1(232) Definitions
 105.2(232) Buildings and grounds
 105.3(232) Personnel policies
 105.4 Reserved
 105.5(232) Staff
 105.6(232) Intake procedures
 105.7(232) Assessments
 105.8(232) Program services
 105.9(232) Medication management and administration

105.10(232)	Control room—juvenile detention home only
105.11(232)	Clothing
105.12(232)	Staffings
105.13(232)	Child abuse
105.14(232)	Daily log
105.15(232)	Children's rights
105.16(232)	Discipline
105.17(232)	Case files
105.18(232)	Discharge
105.19(232)	Approval
105.20(232)	Provisional approval
105.21(232)	Mechanical restraint—juvenile detention only
105.22(232)	Chemical restraint
105.23(232)	Mandatory reporting of child abuse and training

CHAPTER 106

CERTIFICATION STANDARDS FOR CHILDREN'S RESIDENTIAL FACILITIES

106.1(237C)	Definitions
106.2(237C)	Application of the standards
106.3(237C)	Application for a certificate of approval
106.4(237C)	Certificate of approval
106.5(237C)	Denial, suspension, or revocation
106.6(237C)	Providing for basic needs
106.7(237C)	Educational programs and services
106.8(237C)	Protection from mistreatment, physical abuse, sexual abuse, and neglect
106.9(237C)	Discipline
106.10(237C)	Record checks
106.11(237C)	Seclusion and restraints
106.12(237C)	Health
106.13(237C)	Safety
106.14(237C)	Emergencies
106.15(237C)	Buildings and physical premises
106.16(237C)	Sanitation, water, and waste disposal
106.17(237C)	Staffing
106.18(237C)	Reports and inspections
106.19(232)	Mandatory reporting of child abuse

CHAPTER 107

CERTIFICATION OF ADOPTION INVESTIGATORS

107.1(600)	Introduction
107.2(600)	Definitions
107.3(600)	Application
107.4(600)	Requirements for certification
107.5(600)	Granting, denial, or revocation of certification
107.6(600)	Certificate
107.7(600)	Renewal of certification
107.8(600)	Investigative services
107.9(600)	International adoptions postplacement report
107.10(600)	Retention of adoption records
107.11(600)	Reporting of violations
107.12(600)	Appeals

CHAPTER 108

LICENSING AND REGULATION OF CHILD-PLACING AGENCIES

108.1(238)	Definitions
108.2(238)	Licensing procedure
108.3(238)	Administration and organization
108.4(238)	Staff qualifications
108.5(238)	Staffing requirements
108.6(238)	Personnel administration
108.7(238)	Foster care services
108.8(238)	Foster home studies
108.9(238)	Adoption services
108.10(238)	Supervised apartment living placement services

CHAPTER 109

CHILD CARE CENTERS

109.1(237A)	Definitions
109.2(237A)	Licensure procedures
109.3(237A)	Inspection and evaluation
109.4(237A)	Administration
109.5(237A)	Parental participation
109.6(237A)	Personnel
109.7(237A)	Professional growth and development
109.8(237A)	Staff ratio requirements
109.9(237A)	Records
109.10(237A)	Health and safety policies
109.11(237A)	Physical facilities
109.12(237A)	Activity program requirements
109.13(237A)	Extended evening care
109.14(237A)	Get-well center
109.15(237A)	Food services

CHAPTER 110

CHILD DEVELOPMENT HOMES

110.1(237A)	Definitions
110.2(237A)	Application for registration
110.3(237A)	Renewal of registration
110.4(237A)	Compliance checks
110.5(237A)	Parental access
110.6(237A)	Number of children
110.7(237A)	Provider requirements
110.8(237A)	Standards
110.9(237A)	Files
110.10(237A)	Professional development
110.11(234)	Registration decision
110.12(237A)	Complaints
110.13(237A)	Additional requirements for child development home category A
110.14(237A)	Additional requirements for child development home category B
110.15(237A)	Additional requirements for child development home category C
110.16(237A)	Registration actions for nonpayment of child support
110.17(237A)	Prohibition from involvement with child care

CHAPTER 111
FAMILY-LIFE HOMES

- 111.1(249) Definitions
- 111.2(249) Application for certification
- 111.3(249) Provisions pertaining to the certificate
- 111.4(249) Physical standards
- 111.5(249) Personal characteristics of family-life home family
- 111.6(249) Health of family
- 111.7(249) Planned activities and personal effects
- 111.8(249) Client eligibility
- 111.9(249) Medical examinations, records, and care of a client
- 111.10(249) Placement agreement
- 111.11(249) Legal liabilities
- 111.12(249) Emergency care and release of client
- 111.13(249) Information about client to be confidential

CHAPTER 112
LICENSING AND REGULATION OF CHILD FOSTER CARE FACILITIES

- 112.1(237) Applicability
- 112.2(237) Definitions
- 112.3(237) Application for license
- 112.4(237) License
- 112.5(237) Denial
- 112.6(237) Revocation
- 112.7(237) Provisional license
- 112.8(237) Adverse actions
- 112.9(237) Suspension
- 112.10(232) Mandatory reporting of child abuse and training
- 112.11(237) Required training on the reasonable and prudent parent standard
- 112.12(237) Record checks

CHAPTER 113
LICENSING AND REGULATION OF FOSTER FAMILY HOMES

- 113.1(237) Applicability
- 113.2(237) Definitions
- 113.3(237) Licensing procedure
- 113.4(237) Provisions pertaining to the license
- 113.5(237) Physical standards
- 113.6(237) Sanitation, water, and waste disposal
- 113.7(237) Safety
- 113.8(237) Foster parent training
- 113.9(237) Involvement of kin
- 113.10(237) Information on the child(ren) placed in the home
- 113.11(237) Health of foster family
- 113.12(237) Characteristics of foster parents
- 113.13(237) Record checks
- 113.14(237) Reference checks
- 113.15(237) Unannounced visits
- 113.16(237) Planned activities and personal effects
- 113.17(237) Medical examinations and health care of the child(ren)
- 113.18(237) Training and discipline of child(ren)

- 113.19(237) Emergency care and release of child(ren)
- 113.20(237) Changes in foster family home

CHAPTER 114

LICENSING AND REGULATION OF ALL GROUP LIVING FOSTER CARE FACILITIES FOR CHILDREN

- 114.1(237) Applicability
- 114.2(237) Definitions
- 114.3(237) Physical standards
- 114.4(237) Sanitation, water, and waste disposal
- 114.5(237) Safety
- 114.6(237) Organization and administration
- 114.7(237) Policies and record-keeping requirements
- 114.8(237) Staff
- 114.9(237) Intake procedures
- 114.10(237) Program services
- 114.11(237) Case files
- 114.12(237) Drug utilization and control
- 114.13(237) Children's rights
- 114.14(237) Personal possessions
- 114.15(237) Religion—culture
- 114.16(237) Work or vocational experiences
- 114.17(237) Family involvement
- 114.18(237) Children's money
- 114.19(237) Child abuse
- 114.20(237) Discipline
- 114.21(237) Illness, accident, death, or unauthorized absence from the facility
- 114.22(237) Records
- 114.23(237) Unannounced visits
- 114.24(237) Record check information
- 114.25(237) Standards for private juvenile shelter care and detention homes

CHAPTER 115

LICENSING AND REGULATION OF COMPREHENSIVE RESIDENTIAL FACILITIES FOR CHILDREN

- 115.1(237) Applicability
- 115.2(237) Definitions
- 115.3(237) Information upon admission
- 115.4(237) Staff
- 115.5(237) Casework services
- 115.6(237) Restraints
- 115.7(237) Control room
- 115.8(237) Locked cottages
- 115.9(237) Mechanical restraint
- 115.10(237) Restraint and control room use debriefing
- 115.11(237) Chemical restraint

CHAPTER 116

LICENSING AND REGULATION OF RESIDENTIAL FACILITIES FOR CHILDREN WITH AN INTELLECTUAL DISABILITY OR BRAIN INJURY

- 116.1(237) Applicability
- 116.2(237) Definitions
- 116.3(237) Qualifications of staff

- 116.4(237) Staff to client ratio
- 116.5(237) Program components
- 116.6(237) Restraint

CHAPTER 117
FOSTER PARENT TRAINING

- 117.1(237) Required preservice training
- 117.2(237) Required orientation
- 117.3(237) Application materials for in-service training
- 117.4(237) Application process for in-service training
- 117.5(237) Application decisions
- 117.6(237) Application conference available
- 117.7(237) Required in-service training
- 117.8(237) Specific in-service training required
- 117.9(237) Foster parent training expenses

CHAPTER 118
CHILD CARE QUALITY RATING SYSTEM

DIVISION I
QUALITY RATING SYSTEM (QRS)

- 118.1(237A) Definitions
- 118.2(237A) Application for quality rating
- 118.3(237A) Rating standards for child care centers and preschools (sunsetting on July 31, 2011)
- 118.4(237A) Rating criteria for child development homes (sunsetting on July 31, 2011)
- 118.5(237A) Rating standards for child care centers, preschools, and programs operating under the authority of an accredited school district or nonpublic school
- 118.6(237A) Rating criteria for child development homes
- 118.7(237A) Award of quality rating
- 118.8(237A) Adverse actions

DIVISION II
IOWA QUALITY FOR KIDS (IQ4K)

- 118.9(237A) Definitions
- 118.10(237A) Application for Iowa quality for kids (IQ4K) rating
- 118.11(237A) Application effective date
- 118.12(237A) Approved program's expiration date
- 118.13(237A) Renewal application submission, Levels 1-4
- 118.14(237A) Renewal application submission, Level 5
- 118.15(237A) Increased rating
- 118.16(237A) Change in location of facility
- 118.17(237A) Ongoing eligibility
- 118.18(237A) Monitoring
- 118.19(237A) Professional development training
- 118.20(237A) Rating standards for a child care center, a preschool, or a program operating under the authority of an accredited school district or nonpublic school
- 118.21(237A) Criteria for IQ4K—Level 1 child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school
- 118.22(237A) Criteria for IQ4K—Level 2 child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school
- 118.23(237A) Criteria for IQ4K—Level 3 child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school
- 118.24(237A) Criteria for IQ4K—Level 4 child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school

- 118.25(237A) Criteria for IQ4K—Level 5 child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school
- 118.26(237A) Rating standards for school-aged only programs
- 118.27(237A) Criteria for IQ4K—Level 1 school-aged only programs
- 118.28(237A) Criteria for IQ4K—Level 2 school-aged only programs
- 118.29(237A) Criteria for IQ4K—Level 3 school-aged only programs
- 118.30(237A) Criteria for IQ4K—Level 4 school-aged only programs
- 118.31(237A) Criteria for IQ4K—Level 5 school-aged only programs
- 118.32(237A) Rating standards for registered child development homes
- 118.33(237A) Criteria for IQ4K—Level 1 rating standards for registered child development homes
- 118.34(237A) Criteria for IQ4K—Level 2 rating standards for registered child development homes
- 118.35(237A) Criteria for IQ4K—Level 3 rating standards for registered child development homes
- 118.36(237A) Criteria for IQ4K—Level 4 rating standards for registered child development homes
- 118.37(237A) Criteria for IQ4K—Level 5 rating standards for registered child development homes
- 118.38(237A) Award of quality rating
- 118.39(237A) Adverse actions

CHAPTER 119

RECORD CHECK EVALUATIONS FOR CERTAIN EMPLOYERS AND EDUCATIONAL TRAINING PROGRAMS

- 119.1(135B,135C) Definitions
- 119.2(135B,135C) When record check evaluations are requested
- 119.3(135C) Request for evaluation
- 119.4(135B,135C) Completion of evaluation
- 119.5(135B,135C) Appeal rights

CHAPTER 120

CHILD CARE HOMES

- 120.1(237A) Definitions
- 120.2(237A) Application for payment
- 120.3(237A) Renewal of agreement
- 120.4(237A) Compliance checks
- 120.5(237A) Parental access
- 120.6(237A) Number of children
- 120.7(237A) Provider requirements
- 120.8(237A) Standards
- 120.9(237A) Children's files
- 120.10(237A) Professional development
- 120.11(237A) Child care assistance provider agreement decision
- 120.12(237A) Complaints
- 120.13(237A) Prohibition from involvement with child care

CHAPTER 121

EARLY CHILDHOOD IOWA INITIATIVE

- 121.1(256I) Purpose
- 121.2(256I) Scope of the rules
- 121.3(256I) Definitions
- 121.4(256I) Early childhood Iowa state board responsibility

- 121.5(256I) Early childhood Iowa coordination staff
- 121.6(256I) Early childhood Iowa areas
- 121.7(256I) Early childhood stakeholders alliance

CHAPTER 122

FISCAL OVERSIGHT OF THE EARLY CHILDHOOD IOWA INITIATIVE

- 122.1(256I) Definitions
- 122.2(256I) Purpose
- 122.3(256I) Scope of the rules
- 122.4(256I) Fiscal oversight

CHAPTERS 123 to 129

Reserved

TITLE XIII

SERVICE ADMINISTRATION

CHAPTER 130

GENERAL PROVISIONS

- 130.1(234) Definitions
- 130.2(234) Application
- 130.3(234) Eligibility
- 130.4(234) Fees
- 130.5(234) Adverse service actions
- 130.6(234) Social casework
- 130.7(234) Case plan
- 130.8 Reserved
- 130.9(234) Entitlement

CHAPTER 131

SOCIAL CASEWORK

- 131.1(234) Definitions
- 131.2(234) Eligibility
- 131.3(234) Service provision
- 131.4 Reserved
- 131.5(234) Adverse actions

CHAPTER 132

Reserved

CHAPTER 133

IV-A EMERGENCY ASSISTANCE PROGRAM

- 133.1(235) Definitions
- 133.2(235) Application
- 133.3(235) Eligibility
- 133.4(235) Method of service provision
- 133.5(235) Duration of services
- 133.6(235) Discontinuance of the program

CHAPTERS 134 to 141

Reserved

CHAPTER 142

INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

142.1(232)	Compact agreement
142.2(232)	Compact administrator
142.3 and 142.4	Reserved
142.5(232)	Article III(a) procedures
142.6(232)	Article III(c)
142.7(232)	Article V(c)
142.8(232)	Article VIII(a)
142.9(232)	Applicability
142.10(232)	NEICE database

CHAPTER 143

INTERSTATE COMPACT ON JUVENILES

143.1(232)	Compact agreement
143.2(232)	Compact administrator
143.3(232)	Sending a juvenile out of Iowa under the compact
143.4(232)	Receiving cases in Iowa under the interstate compact
143.5(232)	Runaways

CHAPTERS 144 to 149

Reserved

TITLE XIV

GRANT/CONTRACT/PAYMENT ADMINISTRATION

CHAPTER 150

Reserved

CHAPTER 151

JUVENILE COURT SERVICES DIRECTED PROGRAMS

DIVISION I

GENERAL PROVISIONS

151.1(232)	Definitions
151.2(232)	Administration of funds for court-ordered services and graduated sanction services
151.3(232)	Administration of juvenile court services programs within each judicial district
151.4(232)	Billing and payment
151.5(232)	Appeals
151.6(232)	District program reviews and audits
151.7 to 151.19	Reserved

DIVISION II

COURT-ORDERED SERVICES

151.20(232)	Juvenile court services responsibilities
151.21(232)	Certification process
151.22(232)	Expenses
151.23 to 151.29	Reserved

DIVISION III

GRADUATED SANCTION SERVICES

151.30(232)	Community-based interventions
151.31(232)	School-based supervision
151.32(232)	Supportive enhancements
151.33	Reserved
151.34(232)	Administration of graduated sanction services
151.35(232)	Contract development for graduated sanction services

CHAPTER 152
FOSTER CARE CONTRACTING

- 152.1(234) Definitions
- 152.2(234) Conditions of participation
- 152.3(234) Provider reviews
- 152.4(234) Sanctions against providers
- 152.5(234) Adverse actions

CHAPTER 153
FUNDING FOR LOCAL SERVICES

DIVISION I
SOCIAL SERVICES BLOCK GRANT

- 153.1(234) Definitions
- 153.2(234) Development of preexpenditure report and intended use plan
- 153.3(234) Amendment to preexpenditure report and intended use plan
- 153.4(234) Service availability
- 153.5(234) Allocation of block grant funds
- 153.6 and 153.7 Reserved
- 153.8(234) Expenditure of supplemental funds
- 153.9 and 153.10 Reserved

DIVISION II
DECATEGORIZATION OF CHILD WELFARE AND JUVENILE JUSTICE FUNDING

- 153.11(232) Definitions
- 153.12(232) Implementation requirements
- 153.13(232) Role and responsibilities of decategorization project governance boards
- 153.14(232) Realignment of decategorization project boundaries
- 153.15(232) Decategorization services funding pool
- 153.16(232) Relationship of decategorization funding pool to other department child welfare funding
- 153.17(232) Relationship of decategorization funding pool to juvenile court services funding streams
- 153.18(232) Requirements for annual services plan
- 153.19(232) Requirements for annual progress report

CHAPTER 154
Reserved

CHAPTER 155
CHILD ABUSE PREVENTION PROGRAM

- 155.1(235A) Definitions
- 155.2(235A) Contract for program administration
- 155.3(235A) Awarding of grants
- 155.4(235A) Grantee requirements

CHAPTER 156
PAYMENTS FOR FOSTER CARE

- 156.1(234) Definitions
- 156.2(234) Foster care recovery
- 156.3 to 156.5 Reserved
- 156.6(234) Rate of maintenance payment for foster family care
- 156.7(234) Kinship caregiver payment
- 156.8(234) Additional payments
- 156.9(234) Rate of payment for foster group care

156.10(234)	Payment for reserve bed days
156.11(234)	Emergency juvenile shelter care payment
156.12(234)	Supervised apartment living
156.13	Reserved
156.14(234,252C)	Voluntary placements
156.15(234)	Child's earnings
156.16(234)	Trust funds and investments
156.17(234)	Preadoptive homes
156.18 and 156.19	Reserved
156.20(234)	Eligibility for foster care payment

CHAPTER 157

Reserved

CHAPTER 158

FOSTER HOME INSURANCE FUND

158.1(237)	Applicability
158.2(237)	Definitions
158.3(237)	Payments from the foster home insurance fund
158.4(237)	Payment limits
158.5(237)	Claim procedures
158.6(237)	Time frames for filing claims
158.7(237)	Appeals

CHAPTER 159

CHILD CARE RESOURCE AND REFERRAL SERVICES

159.1(237A)	Definitions
159.2(237A)	Availability of funds
159.3(237A)	Participation requirements
159.4(237A)	Request for proposals for project grants
159.5(237A)	Selection of proposals

CHAPTERS 160 to 162

Reserved

CHAPTER 163

ADOLESCENT PREGNANCY PREVENTION AND SERVICES
TO PREGNANT AND PARENTING ADOLESCENTS
PROGRAMS

163.1(234)	Definitions
163.2(234)	Availability of grants for projects
163.3(234)	Project eligibility
163.4(234)	Request for proposals for pilot project grants
163.5(234)	Selection of proposals
163.6(234)	Project contracts
163.7(234)	Records
163.8(234)	Evaluation
163.9(234)	Termination of contract
163.10(234)	Appeals

CHAPTERS 164 and 165

Reserved

CHAPTER 166
QUALITY IMPROVEMENT INITIATIVE GRANTS

166.1(249A)	Definitions
166.2(249A)	Availability of grants
166.3(249A)	Grant eligibility
166.4(249A)	Grant application process and selection of proposals
166.5(249A)	Project contracts

CHAPTER 167
JUVENILE DETENTION REIMBURSEMENT

DIVISION I
ANNUAL REIMBURSEMENT PROGRAM

167.1(232)	Definitions
167.2(232)	Availability of funds
167.3(232)	Eligible detention homes
167.4(232)	Available reimbursement
167.5(232)	Submission of voucher
167.6(232)	Reimbursement by the department

CHAPTERS 168 and 169
Reserved

TITLE XV
*INDIVIDUAL AND FAMILY SUPPORT
AND PROTECTIVE SERVICES*

CHAPTER 170
CHILD CARE SERVICES

170.1(237A)	Definitions
170.2(237A,239B)	Eligibility requirements
170.3(237A,239B)	Application and determination of eligibility
170.4(237A)	Elements of service provision
170.5(237A)	Adverse actions
170.6(237A)	Appeals
170.7(237A)	Provider fraud
170.8	Reserved
170.9(237A)	Child care assistance overpayments

CHAPTER 171
Reserved

CHAPTER 172
FAMILY-CENTERED SERVICES

172.1(234)	Definitions
172.2(234)	Purpose and scope
172.3(234)	Authorization
172.4	Reserved
172.5(234)	Client appeals

CHAPTERS 173 and 174
Reserved

CHAPTER 175
ABUSE OF CHILDREN

DIVISION I
CHILD ABUSE

175.1 to 175.20 Reserved

DIVISION II
CHILD ABUSE ASSESSMENT

175.21(232,235A) Definitions
 175.22(232) Receipt of a report of suspected child abuse
 175.23(232) Sources of report of suspected child abuse
 175.24(232) Assessment intake process
 175.25(232) Assessment process
 175.26(232) Completion of a written assessment report
 175.27(232) Contact with juvenile court or the county attorney
 175.28(232) Consultation with health practitioners or mental health professionals
 175.29(232) Consultation with law enforcement
 175.30(232) Information shared with law enforcement
 175.31(232) Completion of required correspondence
 175.32(232,235A) Case records
 175.33(232,235A) Child protection centers
 175.34(232) Department-operated facilities
 175.35(232,235A) Jurisdiction of assessments
 175.36(235A) Multidisciplinary teams
 175.37(232) Community education
 175.38(235) Written authorizations
 175.39(232) Founded child abuse
 175.40 Reserved
 175.41(235A) Access to child abuse information
 175.42(235A) Person conducting research
 175.43(235A) Child protection services citizen review panels

CHAPTER 176
DEPENDENT ADULT ABUSE

176.1(235B) Definitions
 176.2(235B) Denial of critical care
 176.3(235B) Appropriate evaluation
 176.4(235B) Reporters
 176.5(235B) Reporting procedure
 176.6(235B) Duties of the department upon receipt of report
 176.7(235B) Appropriate evaluation or assessment
 176.8(235B) Registry records
 176.9(235B) Dependent adult abuse information disseminated
 176.10(235B) Person conducting research
 176.11(235B) Examination of information
 176.12(235B) Dependent adult abuse information registry
 176.13(235B) Multidisciplinary teams
 176.14(235B) Request for correction or expungement

CHAPTER 177
IN-HOME HEALTH-RELATED CARE

177.1(249) In-home health-related care
 177.2(249) Definitions

177.3(249)	Service criteria
177.4(249)	Eligibility and application
177.5(249)	Qualifications of providers of health care services
177.6(249)	Physician's certification
177.7(249A)	Service worker duties
177.8(249)	Supervising practitioner duties
177.9(249)	Written agreements
177.10(249)	Payment
177.11(249)	Termination

CHAPTERS 178 to 183
Reserved

CHAPTER 184
INDIVIDUAL AND FAMILY DIRECT SUPPORT

DIVISION I
FAMILY SUPPORT SUBSIDY PROGRAM

184.1(225C)	Definitions
184.2(225C)	Eligibility requirements
184.3(225C)	Program termination
184.4(225C)	Family support services plan
184.5	Reserved
184.6(225C)	Amount of subsidy payment
184.7(225C)	Redetermination of eligibility
184.8(225C)	Termination of subsidy payments
184.9(225C)	Appeals
184.10 to 184.20	Reserved

DIVISION II
COMPREHENSIVE FAMILY SUPPORT PROGRAM

184.21(225C)	Definitions
184.22(225C)	Eligibility
184.23(225C)	Application
184.24(225C)	Contractor selection and duties
184.25(225C)	Direct assistance
184.26(225C)	Appeals

CHAPTERS 185 and 186
Reserved

CHAPTER 187
AFTERCARE SERVICES PROGRAM

187.1(234)	Purpose
187.2(234)	Aftercare services program eligibility requirements
187.3(234)	Services and supports provided
187.4(234)	Termination of aftercare services
187.5(234)	Waiting list
187.6(234)	Administration

CHAPTERS 188 to 199
Reserved

TITLE XVI
ALTERNATIVE LIVING

CHAPTER 200
ADOPTION SERVICES

200.1(600)	Definitions
200.2(600)	Release of custody services
200.3(600)	Application
200.4(600)	Adoption services
200.5(600)	Termination of parental rights
200.6 and 200.7	Reserved
200.8(600)	Interstate placements
200.9	Reserved
200.10(600)	Requests for home studies
200.11(600)	Reasons for denial
200.12(600)	Removal of child from preadoptive family
200.13(600)	Consents
200.14(600)	Requests for access to information for research or treatment
200.15(600)	Requests for information for purposes other than research or treatment
200.16(600)	Appeals

CHAPTER 201
SUBSIDIZED ADOPTIONS

201.1(600)	Administration
201.2(600)	Definitions
201.3(600)	Conditions of eligibility or ineligibility
201.4(600)	Application
201.5(600)	Negotiation of amount of presubsidy or subsidy
201.6(600)	Types of subsidy
201.7(600)	Termination of subsidy
201.8(600)	Reinstatement of subsidy
201.9(600)	New application
201.10(600)	Determination of ongoing subsidy eligibility and suspension of subsidy payments
201.11(600)	Medical assistance based on residency
201.12(600)	Presubsidy recovery

CHAPTER 202
FOSTER CARE PLACEMENT AND SERVICES

202.1(234)	Definitions
202.2(234)	Eligibility
202.3(234)	Voluntary placements
202.4(234)	Selection of facility
202.5(234)	Preplacement
202.6(234)	Placement
202.7(234)	Out-of-area placements
202.8(234)	Out-of-state placements
202.9(234)	Supervised apartment living
202.10(234)	Services to foster parents
202.11(234)	Services to the child
202.12(234)	Services to parents
202.13(234)	Removal of the child
202.14(234)	Termination
202.15(234)	Case permanency plan

- 202.16(135H) Department approval of need for a psychiatric medical institution for children
- 202.17(232) Area group care targets
- 202.18(235) Local transition committees

CHAPTER 203

IOWA ADOPTION EXCHANGE

- 203.1(232) Definitions
- 203.2(232) Children to be registered on the exchange system
- 203.3(232) Families to be registered on the exchange system
- 203.4(232) Matching process

CHAPTER 204

SUBSIDIZED GUARDIANSHIP PROGRAM

- 204.1(234) Definitions
- 204.2(234) Eligibility
- 204.3(234) Application
- 204.4(234) Negotiation of amount of subsidy
- 204.5(234) Parental liability
- 204.6(234) Determination of ongoing subsidy eligibility and suspension of subsidy payments
- 204.7(234) Termination of subsidy
- 204.8(234) Reinstatement of subsidy
- 204.9(234) Appeals
- 204.10(234) Medical assistance

CHAPTER 6
WAIVERS OF HEALTH AND HUMAN SERVICES
ADMINISTRATIVE RULES

[Prior to 6/28/23, see Public Health Department[641] Ch 178]

441—6.1(17A,135) Waivers.

6.1(1) Definition. For purposes of this chapter, “a waiver ” means action by the department that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

6.1(2) Scope. This rule outlines generally applicable standards and a uniform process for the granting of an individual waiver from a rule adopted by the department in situations where no other more specifically applicable law provides for a waiver. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

6.1(3) Applicability. The department may only grant a waiver from a rule if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute.

6.1(4) Criteria for waiver. In response to a petition completed pursuant to subrule 6.1(6), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

6.1(5) Filing of petition. A petition for a waiver must be submitted in writing to the department as follows:

a. Application for license, registration, certification, or permit. If the petition relates to an application for license, registration, certification, or permit, the petition shall be made in accordance with the filing requirements for the application in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to an application or a pending contested case, the petition may be submitted to the department director.

d. A petition is deemed filed when it is received at the department’s office. A petition should be sent to the Department of Health and Human Services, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. The petition must be typewritten or legibly handwritten in ink and substantially conform to the form specified in rule 441—6.2(17A,217).

6.1(6) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the person for whom a waiver is being requested and a reference to any related contested case. The petition shall also include the name, address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

b. A description and citation of the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 6.1(4). This statement shall include a signed statement from the petitioner

attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department and the petitioner relating to the regulated activity, license, registration, certification, or permit affected by the proposed waiver, including a description of each affected license, registration, certification, or permit held by the requester, any formal charges filed, any notices of violation, contested case hearings, or investigations relating to the regulated activity, license, registration, certification or permit.

f. Any information known to the requester regarding the department's action in similar circumstances.

g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver.

h. The name, address, and telephone number of any person who would be adversely affected by the granting of the petition.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

6.1(7) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department director or the director's designee.

6.1(8) Notice. The department shall acknowledge a petition upon receipt. Except where otherwise provided by law, every petition shall be served by the petitioner upon each of the parties of record of the proceeding and on all other persons identified in the petition for waiver as affected by the petition, simultaneously with the filing. The petitioner shall serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the department attesting that notice has been provided. In addition, the department may give notice to other persons.

6.1(9) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. A person who objects to a denial of a waiver in proceedings other than a contested case hearing may make an informal appearance before the department director, or the director's designee, to request reconsideration.

6.1(10) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Department discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the department upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a department rule.

c. Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. Conditions. The department may place any condition on a waiver that the department finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right

to renewal. At the sole discretion of the department, a waiver may be renewed if the department finds that grounds for a waiver continue to exist.

g. Time for ruling. The department shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

6.1(11) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

6.1(12) Summary reports. When the department grants a waiver, the department shall submit to the designated Internet site, within 60 days of the waiver decision, the following information: identification of the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department’s actions on waiver requests. If practicable, the report shall include information detailing the extent to which the granting of a waiver has affected the general applicability of the rule itself.

6.1(13) Cancellation of a waiver. A waiver issued by the department pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

- a.* The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
- b.* The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been insufficient; or
- c.* The subject of the waiver order has failed to comply with all conditions contained in the order.

6.1(14) Violations. A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

6.1(15) Defense. After the department issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

6.1(16) Judicial review. Judicial review of the department’s decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

[ARC 5334C, IAB 12/16/20, effective 1/20/21; Editorial change: IAC Supplement 6/28/23]

441—6.2(17A,217) Sample petition for waiver. A petition for waiver filed in accordance with rule 441—6.1(17A,217) must meet the requirements specified therein and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Petition by (name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).	}	PETITION FOR WAIVER
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1. Provide petitioner's (person asking for a waiver) name, address, and telephone number. Also include the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

a. Why applying the rule would result in undue hardship to the petitioner;

b. Why waiving the rule would not prejudice the substantial legal rights of any person;

c. Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and

d. How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department and petitioner relating to the regulated activity, license, registration, certification or permit that would be affected by the waiver. Include a description of each affected license, registration, certification, or permit held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the department's action in similar circumstances.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.

9. Provide the name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

[ARC 5334C, IAB 12/16/20, effective 1/20/21; Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code section 17A.9A and chapter 135.

[Filed 3/18/98, Notice 1/28/98—published 4/8/98, effective 5/13/98]

[Filed 5/10/01, Notice 2/21/01—published 5/30/01, effective 7/4/01]

[Filed ARC 5334C (Notice ARC 5196C, IAB 9/23/20), IAB 12/16/20, effective 1/20/21]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 9
PUBLIC RECORDS AND FAIR
INFORMATION PRACTICES

PREAMBLE

These rules describe the records of the Iowa department of human services and procedures for access to these records. All records of the department are open to the public except those that the department is authorized or required by law to keep confidential.

These rules also implement the federal Health Insurance Portability and Accountability Act (HIPAA) regulations at 45 CFR Parts 160 and 164 as amended to August 14, 2002. These rules set forth the standards the department of human services must meet to protect the privacy of protected health information. The department has chosen to be considered a hybrid entity for purposes of HIPAA because there are parts of the department that are not part of the covered entity for purposes of HIPAA compliance.

The rules on protected health information apply only to those parts of the department that are considered part of the covered entity: the named health plans and health care providers defined in these rules and the divisions or programs that perform functions on behalf of a named health plan. Targeted case management, refugee services, and the child support recovery unit are examples of parts of the department that are not included in the covered entity.

441—9.1(17A,22) Definitions. As used in this chapter:

“Business associate” means a person or organization, other than a member of the department’s workforce, who meets one of the following criteria:

1. Performs, or assists in the performance of, a function or activity on behalf of the department which involves the use or disclosure of protected health information, including claims processing or administration, data analysis, research, utilization review, quality assurance, billing, benefit management, practice management, and repricing, or any other function or activity regulated by the rules on protected health information.
2. Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the department. The provision of the service shall involve the disclosure of protected health information from the department or from another business associate of the department to the person or organization.

“Client” means a person who has applied for or received services or assistance from the department.

“Confidential record” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include:

1. Records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and
2. Records or information contained in records that is specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“Covered entity” means:

1. A health plan.
2. A health care clearinghouse.
3. A health care provider that transmits any health information in electronic form in connection with a transaction covered by the HIPAA regulations.

“Covered functions” means the functions performed by a covered entity which make the covered entity a health plan, health care clearinghouse, or health care provider.

“Custodian” means the department or a person who has been given authority by the department to act for the department in implementing Iowa Code chapter 22. For local offices, the custodian is the service area manager. For a child support recovery office, the custodian is the regional administrator.

For an institution, the custodian is the institution superintendent. For a central office unit, or for requests dealing with more than one service area, region, or institution, the custodian is the division administrator.

“*Data aggregation*” means the action by which a business associate combines protected health information of the department with protected health information of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

“*Department*” means the Iowa department of human services.

“*Designated record set*” means a group of records maintained by or for the department that is:

1. The medical records about subjects that are maintained for facilities;
2. The enrollment, payment, and eligibility record systems maintained for Medicaid; or
3. The enrollment, payment, and eligibility record systems maintained for the HAWK-I program that are used, in whole or in part, by the HAWK-I program to make decisions about subjects.

For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for the department.

“*Disclosure*” means releasing, transferring, providing access to, or divulging in any other manner information outside the organization holding the information.

“*Facility*” or “*facilities*” means, with respect to HIPAA rules about health information, one or more of these department institutions: Cherokee Mental Health Institute, Clarinda Mental Health Institute, Glenwood Resource Center, Independence Mental Health Institute, Mount Pleasant Mental Health Institute, and Woodward Resource Center.

“*Health care*” means care, services, or supplies related to the health of a subject. “Health care” includes, but is not limited to, the following:

1. Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedures with respect to the physical or mental condition, or functional status, of a subject or affecting the structure or function of the body; and
2. Sale or dispensing of a drug, device, equipment, or other item in accordance with a prescription.

“*Health care clearinghouse*” means a public or private organization, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that performs either of the following functions:

1. Processes or facilitates the processing of health information received from another organization in a nonstandard format or containing nonstandard data content into standard data elements or a standard transaction.
2. Receives a standard transaction from another organization and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving organization.

“*Health care operations*” has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. For a covered entity in the department, “health care operations” has the following meaning:

1. For Medicaid, “health care operations” means any of the following activities of the department to the extent that the activities are related to covered functions:
 - Conducting quality assessments and evaluating outcomes.
 - Developing clinical guidelines.
 - Improving general health or reducing costs.
 - Developing protocols, including case management and care coordination models for MediPASS and pharmacy case management as well as for other service areas and client populations under the Medicaid program.
 - Informing clients of treatment alternatives and related functions.
 - Reviewing competence or qualifications or performance of health care professionals using the surveillance and utilization review subsystem.
 - Reviewing health plan performance from encounter data.
 - Premium rating and rate setting.

- Performing activities in reinsurance of risk with the health maintenance organizations.
- Reviewing medical level of care and prior authorizations.
- Obtaining legal services through the attorney general's office or the county attorney's office.
- Cooperating in audits and fraud detection by Iowa and federal auditors, the Iowa Medicaid enterprise, or the department of inspections and appeals.
 - Conducting business planning and development including formulary development by the drug utilization review commission and the department's research and statistics staff.
 - Managing activities, which include claiming of federal financial participation, recovering unknown third-party liability, recovering nursing care funds and other expenditures through estate recovery, Grouper programming for hospitals, lock-in activities, and federal reporting of paid claims.
 - Providing customer service, which includes income maintenance workers answering questions about lock-in providers, copayment for pregnant women, and claims payment problems; and the Iowa Medicaid enterprise provider services unit answering questions on claims payment.
 - Coordinating care and monitoring the effective delivery of child welfare services to ensure the safety and well-being of children, including reporting and providing testimony to the court of jurisdiction on the condition and service progress of a client receiving services from the department. These care coordination and monitoring activities include providing information concerning the client to attorneys representing the various parties in the court proceedings.

2. For the HAWK-I program, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines; population-based activities relating to improving health or reducing health care costs, protocol development and related functions that do not include treatment.
- Reviewing health plan performance.
- Premium rating and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits.
- Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
- Performing business planning and development functions, such as conducting cost-management and planning-related analyses relating to management and operations and the development or improvement of methods of payment or coverage policies.
- Performing business management and general administrative activities, including, but not limited to, management activities relating to implementation of and compliance with privacy requirements, customer service, and resolution of internal grievances.

3. For the facilities, "health care operations" means any of the following activities of the department to the extent that the activities are related to covered functions:

- Conducting quality assessment and improvement activities, including evaluation of outcomes and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from these activities; population-based activities relating to improving health or reducing health care costs; protocol development; case management and care coordination; contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment.
 - Reviewing the competence or qualifications of health care professionals.
 - Evaluating performance of practitioners, providers and health plans.
 - Conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers.
 - Training of non-health care professionals.
 - Performing accreditation, certification, licensing, or credentialing activities.
 - Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs.
 - Performing business planning and development functions, such as conducting cost-management and planning-related analyses related to managing and operating the organization,

including formulary development and administration, development or improvement of methods of payment or coverage policies.

- Performing business management and general administrative activities, including, but not limited to, management activities related to implementation of and compliance with the requirements of HIPAA; customer service, which includes the provision of data analyses for policyholders, plan sponsors, or other customers, provided that protected health information is not disclosed to the policyholder, plan sponsor, or customer; resolution of internal grievances; and activities consistent with the applicable requirements of subrule 9.10(29) on creating de-identified health information or a limited data set.

“Health care provider” means a provider of services, as defined in Section 1861(u) of the Social Security Act and 42 U.S.C. 1395x(u); a provider of medical or health services, as defined in Section 1861(s) of the Social Security Act and 42 U.S.C. 1395x(s); and any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. In the department, “health care provider” means one of the department’s facilities.

“Health information” means any information, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of a subject; the provision of health care to a subject; or the past, present, or future payment for the provision of health care to a subject.

“Health maintenance organization (HMO)” means a public or private organization licensed as an HMO under the commerce department, insurance division, 191—Chapter 40.

“Health oversight agency” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency, that is authorized by law to:

1. Oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance; or
2. Enforce civil rights laws for which health information is relevant.

The term “health oversight agency” includes the employees or agents of the public agency and its contractors or persons or organizations to which the agency has granted authority.

“Health plan” means an individual or group plan that provides or pays the cost of medical care, as defined at 45 CFR 160.103 as amended to August 14, 2002. In the department, “health plan” means Medicaid or HAWK-I.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

“Law enforcement official” means an officer or employee of any agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, who is empowered by law to:

1. Investigate or conduct an official inquiry into a potential violation of law; or
2. Prosecute or otherwise conduct a criminal, civil, or administrative proceeding arising from an alleged violation of law.

“Legal representative” is a person recognized by law as standing in the place or representing the interests of another for one or more purposes. For example, guardians, conservators, custodians, attorneys, parents of a minor, and executors, administrators, or next of kin of a deceased person are legal representatives for certain purposes.

“Mental health information” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services (as defined in Iowa Code section 228.1(8)) and which relates to the diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

“Open record” means a record other than a confidential record.

“Payment,” with respect to HIPAA rules about protected health information, has the same definition as that stated in 45 CFR 164.501 as amended to August 14, 2002. In the department, “payment” applies to subjects for whom health care coverage is provided under the Medicaid program or the HAWK-I program. “Payment” has the following meanings for these health plans:

1. For Medicaid, “payment” includes activities undertaken by this health plan to:
 - Determine or fulfill its responsibility for coverage and provision of benefits under the health plan.
 - Obtain or provide reimbursement for the provision of health care.
 - Determine eligibility, including spenddown for the medically needy program or obtaining premiums for the Medicaid for employed people with disabilities program, or coverage, including coordination of benefits or the determination of cost-sharing amounts, and adjudication or subrogation of health benefit claims.
 - Perform risk adjustment of amounts due based on enrollee health status and demographic characteristics.
 - Bill; manage claims; collect; obtain payment under a contract for reinsurance, including stop-loss insurance and excess of loss insurance; and conduct related health care data processing.
 - Review health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges.
 - Perform utilization review activities, including precertification and preauthorization of services and concurrent and retrospective review of services.
2. For the HAWK-I program, “payment” includes activities undertaken by this health plan to:
 - Obtain reimbursement or pay for providing health care services.
 - Obtain premiums or determine or fulfill its responsibility for coverage and providing benefits. Activities include, but are not limited to, determinations of eligibility for coverage, including coordination of benefits or the determination of cost-sharing amounts; billing and collection activities; review of health care services with respect to coverage under a health plan; and utilization review activities.

“*Personally identifiable information*” means information about or pertaining to the subject of a record which identifies the subject and which is contained in a record system. The incidental mention of another person’s name in a subject’s record (e.g., as employer, landlord, or reference) does not constitute personally identifiable information.

“*Personal representative*” means someone designated by another as standing in the other’s place or representing the other’s interests for one or more purposes. The term “personal representative” includes, but is not limited to, a legal representative. For disclosure of protected health information, the definition of “personal representative” is more restrictive, as described at rule 441—9.15(17A,22).

“*Plan sponsor*” has the same definition as that stated in Section 3(16)(B) of ERISA, 29 U.S.C. 1002(16)(B).

“*Protected health information*” means information that contains a subject’s medical information, including past, present, or future treatment and payment information. “Protected health information” is a composite of multiple fields that grouped together give detailed accumulative information about a subject’s health. When joined together in an accessible record set, the following three distinct areas of health-care-processing file information constitute protected health information:

1. Information that identifies the subject.
2. Medical information describing condition, treatment, or health care.
3. Health care provider information.

Identification information together with any information from one of the other two categories constitutes protected health information. When the information that identifies the subject is present in the record set, any information that ties health care data to the subject’s identification information constitutes protected health information.

“*Psychotherapy notes*” means notes that are recorded in any medium by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the subject’s medical record. “Psychotherapy notes” excludes medication prescription and monitoring, counseling session start and stop times, the methods of therapy and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, the treatment plan, symptoms, prognosis, and progress to date.

“*Public health authority*” means an agency or authority of the United States, a state, a territory, a political subdivision of a state or territory, or an Indian tribe, or a person or organization acting under a grant of authority from or contract with a public agency that is responsible for public health matters as part of its official mandate. “Public health authority” includes the employees or agents of the public agency and its contractors or persons or organizations to which it has granted authority.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of the department.

“*Record system*” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of a subject, number, symbol, or other unique identifier assigned to a subject.

“*Required by law*” means a mandate contained in federal law, federal regulation, state law, state administrative rule, case law, or court order that is enforceable in a court of law. For the purposes of this chapter, “required by law” includes statutes or regulations that require the production of information, such as statutes or regulations that require the information if payment is sought under a government program that provides public benefits.

“*Research*” means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge.

“*Subject*” means the person who is the subject of the record, whether living or deceased.

“*Substance abuse information*” means information which indicates the identity, diagnosis, prognosis, or treatment of any person in an alcohol or drug abuse program.

“*Transaction*” means the electronic transmission of information between two parties to carry out financial or administrative activities related to health care. The term includes the following defined HIPAA standard transactions:

- Health care claims or equivalent encounter information.
- Health care payment and remittance advice.
- Coordination of benefits.
- Health care claim status.
- Enrollment and disenrollment in a health plan.
- Eligibility for a health plan.
- Health plan premium payments.
- Referral certification and authorization.
- Other transactions that the Secretary of Health and Human Services may prescribe by regulation.

“*Treatment*,” with respect to HIPAA rules about protected health information, means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation among health care providers about a patient; and the referral of a patient from one health care provider to another.

“*Use*,” with respect to protected health information, means the sharing, application, utilization, examination, or analysis of the information within an organization that maintains the protected health information.

“*Workforce*” means employees, volunteers, trainees, and other people whose conduct, in the performance of work for the covered entity, is under the direct control of the covered entity, whether or not these people are paid by the covered entity.

441—9.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records. It also seeks to facilitate sound department determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. This department is committed to the policies set forth in Iowa Code chapter 22. Department staff shall cooperate with members of the public in implementing the provisions of that chapter.

441—9.3(17A,22) Requests for access to records.

9.3(1) Location of record. A request for access to a record should be directed to the director or the particular department office where the record is kept.

a. If the location of the record is not known by the requester, the request shall be directed to the Office of Policy Analysis, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114.

b. If a request for access to a record is misdirected, department personnel will promptly forward the request to the appropriate person within the department.

9.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

9.3(3) Request for access. Requests for access to open records may be made in writing, in person, or by telephone. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

9.3(4) Response to requests. Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 441—9.4(17A,22) and other applicable provisions of law.

9.3(5) Security of record. No person may, without permission from the custodian, search or remove any record from department files. Examination and copying of department records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

9.3(6) Copying. A reasonable number of copies of an open record may be made in the department office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

9.3(7) Fees.

a. When charged. The department may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the department shall be prominently posted in department offices. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost as determined and posted in department offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Supervisory fee. An hourly fee may be charged for actual department expenses in supervising the examination and copying of requested records when the supervision time required is in excess of one-half hour. The custodian shall prominently post in department offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of a department clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

d. Advance deposits.

(1) When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

e. Summary of health information. The department may charge a fee for the cost of preparing an explanation or summary of health information as provided in paragraph 9.9(1)“c.” The department and the subject requesting the information shall agree to the amount of any fee imposed before the department prepares the explanation or summary.

441—9.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 441—9.3(17A,22).

9.4(1) Proof of identity. A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

9.4(2) Requests. The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

9.4(3) Notice to subject of record and opportunity to obtain injunction.

a. Except as provided in 441—subrule 175.41(2), after receiving a request for access to a confidential record and before releasing the record, the custodian may make reasonable efforts to promptly notify any person:

- (1) Who is a subject of that record,
- (2) Who is identified in that record, and
- (3) Whose address or telephone number is contained in the record.

b. To the extent such a delay is practicable and in the public interest, the custodian may give the notified subject a reasonable time to seek an injunction under Iowa Code section 22.8. The custodian shall inform the subject identified in the record of how much time the subject has to seek an injunction before the information will be released.

9.4(4) Request denied. When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

a. The name and title or position of the custodian responsible for the denial; and

b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

9.4(5) Request granted. Except as provided in 441—subrule 175.41(2), when the custodian grants a request for access to a confidential record, the custodian shall notify the requester or the person who is to receive the information and include any limits on the examination and copying of the record.

9.4(6) Records requiring special procedures. Special procedures are required for access to:

a. Child abuse information. Access to child abuse information is obtained according to rules 441—175.41(235A) and 441—175.42(235A).

b. Dependent adult abuse information. Access to adult abuse information is governed by rule 441—176.9(235A).

441—9.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examinations. The custodian may treat a record as a confidential record and withhold it from

examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

9.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

9.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian.

a. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request.

b. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit stating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts.

c. Requests to temporarily treat a record as a confidential record shall specify the precise period of time for which that treatment is requested.

d. A person filing such a request shall, if possible, provide a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

9.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

9.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

9.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

9.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

9.5(7) Rights to request privacy protection for protected health information. When the subject is requesting a restriction or confidential communication of protected health information, the department shall follow the provisions of this subrule, as applicable, in addition to the provisions of subrules 9.5(1) through 9.5(6).

a. Restriction of uses and disclosures.

(1) The subject may request that the department restrict uses or disclosures of the subject's protected health information:

1. To carry out treatment, payment, or health care operations; and
2. To persons involved in the subject's care or for notification purposes as permitted under subrule 9.7(3).

(2) The subject shall submit a request to the department on Form 470-3953, Request to Restrict Use or Disclosure of Health Information. If applicable, the subject shall provide verification that it is reasonable to anticipate the use or disclosure will endanger the subject.

(3) The department is not required to agree to a restriction. The department shall deny any restriction when the restriction would adversely affect the quality of the subject's care or services, the restriction would limit or prevent the department from making or obtaining payment for services, or federal or state law requires the use or disclosure. The department shall approve the request for restriction only when the use or disclosure would endanger the subject and none of the above reasons for denial apply.

(4) The department shall send the subject a written notice to accept or deny the restriction.

(5) If the department agrees to a restriction, it may not use or disclose protected health information in violation of the restriction. EXCEPTION: The department may use restricted protected health information or disclose the information to a health care provider when needed for the emergency treatment of the subject who requested the restriction. If restricted protected health information is disclosed to a health care provider for emergency treatment, the department shall request that the health care provider not further use or disclose the information.

(6) A restriction agreed to by the department under paragraph 9.5(7) "a" shall not prevent disclosures of protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations. Also, a restriction shall not prevent uses or disclosures permitted or required for the categories listed in subparagraphs 9.14(5) "a"(1) through (11).

(7) The department may terminate its agreement to a restriction in writing if:

1. The subject agrees to or requests the termination in writing;
2. The subject orally agrees to the termination and the oral agreement is documented; or
3. The department informs the subject that it is ending its agreement to a restriction for protected health information created or received after it has so informed the subject.

b. Confidential communications. Subjects may ask to receive communications of protected health information by alternative means or at alternative locations. The department shall accommodate reasonable requests. For Medicaid and HAWK-I, the subject is required to clearly indicate the reason for requesting the confidential communication. Facilities shall not require the subject to explain the basis for the request as a condition of providing confidential communications.

(1) The subject shall request a confidential communication from the department using Form 470-3947, Request to Change How Health Information Is Provided.

(2) The department may require the subject to provide:

1. When appropriate, information as to how payment, if any, will be handled; and
2. An alternative address or other method of contact.

441—9.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

9.6(1) All programs. Except as otherwise provided by law, a subject may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that subject. However, the subject is

not authorized to alter the original copy of the record or to expand the official record of any department proceeding.

a. The subject shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the office of policy analysis.

b. The request to review such a record or the written statement of additions, dissents, or objections must be dated and signed by the subject, and shall include the current address and telephone number of the subject or the subject's representative.

9.6(2) Additional procedures for protected health information.

a. Right to amend. A subject may request that the department amend protected health information or a record about the subject in a designated record set for as long as the protected health information is maintained in the designated record set. A subject shall submit a request to the department using Form 470-3950, Request to Amend Health Information. The subject shall provide a reason to support the requested amendment.

b. Timely action.

(1) The department shall act on a subject's request for an amendment no later than 60 days after receipt of the request.

(2) If the department is unable to act on the amendment within 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall provide this written statement within the 60-day period after receipt of the request.

c. Action on amendment. If the department grants the requested amendment, in whole or in part, the department shall comply with the following requirements.

(1) The department shall timely inform the subject that the amendment is accepted. The subject shall identify relevant persons with whom the amendment needs to be shared and agree to have the department share the amendment with these persons.

(2) The department shall make the appropriate amendment to the protected health information or record by, at a minimum, identifying the records in the designated record set that are affected by the amendment and appending or otherwise providing a link to the location of the amendment.

(3) The department shall make reasonable efforts to inform and provide the amendment to:

1. Persons identified by the subject as having received protected health information about the subject and as needing the amendment; and

2. Persons, including business associates, that the department knows have the subject's protected health information and that may have relied, or could foreseeably rely, on the information to the detriment of the subject.

d. Denial of amendment. The department may deny a subject's request for amendment, if the department determines that the protected health information or record that is the subject of the request:

(1) Was not created by the department, unless the subject provides a reasonable basis for the department to find that the originator of the protected health information is no longer available to act on the requested amendment;

(2) Is not part of the designated record set;

(3) Would not be available for inspection under rule 441—9.9(17A,22); or

(4) Is accurate and complete.

e. Action on denial of amendment. If the department denies the requested amendment, in whole or in part, the department shall provide the subject with a timely, written denial.

(1) The subject may submit to the department a written statement of disagreement with the denial of all or part of a requested amendment and the basis of the disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The subject shall submit the statement of disagreement by filing an appeal request under subrule 9.14(7). The appeal request constitutes the statement of disagreement.

(2) The department shall prepare a written rebuttal to the subject's statement of disagreement, in accordance with 45 CFR 164.526 as amended to August 14, 2002. The appeal decision constitutes

the rebuttal statement. The department shall provide a copy of the appeal decision to the subject who submitted the appeal request.

f. Record keeping of disputed amendments. The department shall, as appropriate, identify the record or protected health information in the designated record set that is the subject of the disputed amendment. The department shall append or otherwise link the subject's request for an amendment, the department's denial of the request, and the subject's appeal and the final decision, if any, to the designated record set.

g. Future disclosures regarding disputed amendments.

(1) If an appeal has been submitted by the subject, the department shall include the material appended in accordance with paragraph 9.6(2) "f" or, at the election of the department, an accurate summary of the information, with any subsequent disclosure of the protected health information to which the disagreement relates.

(2) If the subject has not submitted an appeal, the department shall include the subject's request for amendment and its denial, or an accurate summary of the information, with any subsequent disclosure of the protected health information only if the subject has requested this action.

(3) When a subsequent disclosure is made using a standard transaction that does not permit the additional material to be included with the disclosure, the department may separately transmit the material required by subparagraph 9.6(2) "g"(1) or (2), as applicable, to the recipient of the standard transaction.

h. Actions on notices of amendment. When the department is informed by another covered entity of an amendment to a subject's protected health information, the department shall amend the protected health information in designated record sets as provided by subparagraph 9.6(2) "c"(2).

441—9.7(17A,22,228) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records to be disclosed, the particular person or class of persons to whom the record may be disclosed, and the time period during which the record may be disclosed. The subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity.

No confidential information about clients of the department shall be released without the client's consent, except as provided in rule 441—9.10(17A,22). Release of information includes:

1. Granting access to or allowing the copying of a record,
2. Providing information either in writing or orally, or
3. Acknowledging information to be true or false.

9.7(1) Forms.

a. General. Department staff shall use Form 470-2115, Authorization for the Department to Release Information, for releases by the subject that do not involve health information requiring use of the authorization form described in paragraph 9.7(1) "c."

b. Obtaining information from a third party. The department is required to obtain information to establish eligibility, determine the amount of assistance, and provide services. Requests to third parties for this information involve release of confidential identifying information about clients. Except as provided in rule 441—9.9(17A,22), the department may make these requests only when the client has authorized the release on one of the following forms.

- (1) Form 470-0461, Authorization for Release of Information.
- (2) Form 470-1630, Household Member Questionnaire.
- (3) Form 470-1631, Bank or Credit Union Information.
- (4) Form 470-4670, Addendum for Application and Review Forms for Release of Information.
- (5) Form 470-1638, Request for School Verification.
- (6) Form 470-2844, Employer's Statement of Earnings.
- (7) Form 470-1640, Verification of Educational Financial Aid.
- (8) Form 470-3742, Financial Institution Verification.

(9) Form 470-3951, Authorization to Obtain or Release Health Care Information.

c. Health information.

(1) When consent or authorization for use or disclosure of health information is required, facilities and department staff responding to third-party requests for health information shall use Form 470-3951, Authorization to Obtain or Release Health Care Information, or a form from another source that meets HIPAA requirements.

The department shall not require a subject to sign a HIPAA authorization form as a condition of treatment, payment, enrollment in a health plan, or eligibility for benefits. The department as a health care provider may require a subject to sign a HIPAA authorization form for the use or disclosure of protected health information for research, as a condition of the subject's receiving research-related treatment.

A subject may revoke a HIPAA authorization provided under subparagraph 9.7(1) "c"(1) at any time, provided that the revocation is in writing using Form 470-3949, Request to End an Authorization, except to the extent that the department has taken action in reliance thereon.

(2) Except as provided in subparagraph 9.7(1) "c"(1), department staff shall release mental health or substance abuse information only with authorization on Form 470-0429, Consent to Obtain and Release Information, or a form from another source that meets requirements of law.

d. Photographs and recordings. The department uses Form 470-0060, Authorization to Take and Use Photographs, and Form 470-0064, Authorization to Take and Use Photographs of Minor or Ward, for permission to use photographs in department publications. The department shall obtain authorization from the subject or person responsible for the subject (such as a guardian, custodian, or personal representative) before taking photographs or making any type of recording for any purpose other than those specifically allowed by law or for internal use within an institution.

9.7(2) Exceptions to use of forms.

a. Counsel. Appearance of counsel before the department on behalf of the subject of a confidential record is deemed to constitute consent for the department to disclose records about the subject to the subject's attorney.

b. Public official. A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the department shall be treated as an authorization to release information. The department shall release sufficient information about the subject to the official to resolve the matter.

c. Medical emergency. Department staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

d. Abuse information. Consent to release information is not required to gather information for investigations of child abuse or dependent adult abuse.

9.7(3) Opportunity for subject to agree or object. This subrule describes when the department may use or disclose protected health information, without a written authorization, to persons involved in the subject's care and for notification purposes. However, the department shall give the subject an opportunity to agree or object, unless this requirement is waived as specified in paragraph 9.7(3) "e."

a. Involvement in the subject's care. The department may disclose protected health information that is directly relevant either to a subject's care or to payment related to the subject's care, provided payment is relevant to the person's involvement in the subject's care. The person involved must be:

- (1) A family member;
- (2) Another relative;
- (3) A close personal friend of the subject; or
- (4) Any other person identified by the subject.

b. Notification purposes. The department may use or disclose protected health information to notify, or assist in notifying, identifying or locating a family member, a personal representative of the subject, or another person responsible for the care of the subject of the subject's location, general condition or death. For disaster relief purposes, the use or disclosure shall be in accordance with paragraph 9.7(3) "f."

c. Uses and disclosures with the subject present. If the subject is present for, or available before, a use or disclosure permitted by this subrule and has the capacity to make health care decisions, the department may use or disclose the protected health information if the department:

- (1) Obtains the subject's agreement;
- (2) Provides the subject with the opportunity to object to the disclosure, and the subject does not express an objection; or
- (3) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the subject does not object to the disclosure.

d. Informing the subject. The department may orally inform the subject of and obtain the subject's oral agreement or objection to a use or disclosure permitted by this subrule.

e. Limited uses and disclosures when the subject is not present. When the subject is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the subject's incapacity or an emergency circumstance, the department may, in the exercise of professional judgment, determine that disclosure is in the best interest of the subject.

(1) When the department determines that disclosure is in the subject's best interest, the department may disclose only the protected health information that is directly relevant to the person's involvement with the subject's health care.

(2) The department may use professional judgment and its experience with common practice to make reasonable inferences of the subject's best interest in allowing a person to act on behalf of the subject to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of protected health information.

f. For disaster relief purposes. The department may use protected health information or disclose protected health information to a public or private organization authorized by law or by its charter to assist in disaster relief efforts for the purpose of coordinating with these organizations the uses or disclosures permitted by paragraph 9.7(3) "b." The requirements in paragraphs 9.7(3) "c" and "d" apply to these uses and disclosures to the extent that the department, in the exercise of professional judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

[ARC 0420C, IAB 10/31/12, effective 1/1/13]

441—9.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department shall notify the person of how the information will be used, which persons outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested.

9.8(1) This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

9.8(2) The notice shall generally be given at the first contact with the department and need not be repeated. Where appropriate, the notice may be given to a person's legal or personal representative. Notice may be withheld in an emergency or where it would compromise the purpose of a department investigation.

9.8(3) In general, the department requests information to determine eligibility and benefit levels for assistance, to provide appropriate services or treatment, and to perform regulatory and administrative functions. Information is routinely shared outside the department when required by rules or law. Consequences of failure to provide information include ineligibility for public assistance, denial of licensure or regulatory approval, or inadequate service provision.

441—9.9(17A,22) Release to subject.

9.9(1) Access by subjects to protected health information.

a. Right of access. Except as otherwise provided in paragraphs 9.9(1) "f" and "g," a subject has a right of access to inspect or to obtain a copy of the protected health information about the subject that

is maintained in a designated record set. Subjects shall submit all requests for access to the department using Form 470-3952, Request for Access to Health Information.

If the department does not maintain the protected health information that is the topic of the subject's request for access, and the department knows where the requested information is maintained, the department shall inform the subject where to direct the request for access.

b. Timely action.

(1) The department shall act on a request for access no later than 30 days after receipt of the request unless the protected health information is not maintained or accessible to the department on site.

(2) If the requested information is not maintained or accessible to the department on site, the department shall take action no later than 60 days from the receipt of the request.

(3) If the department is unable to act within 30 days or 60 days as appropriate, the department may extend the time for the action by no more than 30 days. Within the applicable time limit, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department will complete its action on the request. The department shall have only one extension of time for action on a request for access.

c. Action on providing access. If the department grants the request, in whole or in part, the department shall inform the subject that the request is accepted and shall provide the access requested. Access includes inspecting the protected health information about the subject in designated record sets, obtaining a copy of the information, or both. If the same protected health information that is the subject of a request for access is maintained in more than one designated record set or at more than one location, the department need only produce the protected health information once in response to a request for access.

(1) The department shall provide the subject with access to the protected health information in the form or format requested by the subject, if the requested format is readily producible. If the requested format is not readily producible, the department shall provide the information in a readable hard-copy form or other format as agreed to by the department and the subject.

(2) The department may provide the subject with a summary of the protected health information requested instead of providing access to the protected health information. The department may provide an explanation of the protected health information to which access has been provided. The subject must agree in advance to a summary or explanation and to any fees imposed by the department for the summary or explanation.

d. Time and manner of access. The department shall provide the access as requested by the subject in a timely manner as described in paragraph 9.9(1) "b." The department shall arrange with the subject for a time and place to inspect or obtain a copy of the protected health information that is convenient for both the subject and the department, or shall mail the copy of the protected health information at the subject's request. The department may discuss the scope, format, and other aspects of the request for access with the subject as necessary to facilitate the timely provision of access.

e. Fees for access. If the subject requests a copy of the protected health information or agrees to a summary or explanation of the information, the department may impose a reasonable, cost-based fee, as set forth in subrule 9.3(7).

f. Mandatory reasons for denial of access. The department shall deny a subject access to protected health information when the requested information is:

(1) Psychotherapy notes;

(2) Information compiled in reasonable anticipation of, or for use in, a civil, criminal, or administrative action or proceeding; or

(3) Protected health information maintained by the department that is:

1. Subject to the Clinical Laboratory Improvements Amendments of 1988, 42 U.S.C. Section 263a, to the extent the provision of access to the subject would be prohibited by law; or

2. Exempt from the Clinical Laboratory Improvements Amendments of 1988, pursuant to 42 CFR 493.3(a)(2).

g. Optional reasons for denial of access. The department may deny a subject access in the following circumstances.

(1) The department may temporarily suspend a subject's access to protected health information created or obtained by a covered health care provider in the course of research that includes treatment. The subject must have agreed to the denial of access when consenting to participate in the research that includes treatment. The suspension may last for as long as the research is in progress. The department shall inform the subject that the right of access will be reinstated upon completion of the research.

(2) The department may deny a subject's access to protected health information that is contained in records that are subject to the Privacy Act, 5 U.S.C. Section 552a, if the denial of access under the Privacy Act would meet the requirements of that law.

(3) The department may deny a subject's access if the protected health information was obtained from someone other than a health care provider under a promise of confidentiality and the access requested would be reasonably likely to reveal the source of the information.

(4) State or federal law prohibits a subject's access to protected health information, such as the state law limitations described in subrule 9.9(2).

(5) The department may deny a subject access, provided that the subject is given a right to have the denials reviewed as required by paragraph 9.9(1) "i," in the following circumstances:

1. A licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to endanger the life or physical safety of the subject or another person;

2. The protected health information makes reference to another person (unless the other person is a health care provider) and a licensed health care professional has determined, in the exercise of professional judgment, that the access requested is reasonably likely to cause substantial harm to the other person; or

3. The request for access is made by the subject's personal representative, subject to the more restrictive definition of personal representative for protected health information, and a licensed health care professional has determined, in the exercise of professional judgment, that the provision of access to the personal representative is reasonably likely to cause substantial harm to the subject or another person.

h. Action on denial of access. If the department denies access, in whole or in part, to protected health information, the department shall comply with the following requirements.

(1) The department shall, to the extent possible, give the subject access to any other protected health information requested, after excluding the protected health information to which the department has a reason to deny access.

(2) The department shall provide a timely, written denial to the subject, in accordance with paragraph 9.9(1) "b."

i. Review of denial of access. If access is denied for a reason permitted under subparagraph 9.9(1) "g"(5), a subject may submit a written request for a review of a denial. If the subject requests a review, the department shall promptly refer the request to a licensed health care professional who is designated by the department to act as a reviewing official and who did not participate in the original decision to deny.

(1) The designated reviewing official shall determine, within 30 days, whether or not to deny the access requested based on the standards in subparagraph 9.9(1) "g"(5).

(2) The department shall promptly provide written notice to the subject of the determination made by the designated reviewing official and shall take other action as required to carry out the designated reviewing official's determination.

9.9(2) Access by subjects to other confidential information. The department shall release confidential records to the subject of the record. However, when a record has multiple subjects with interest in the confidentiality of the record, the department may take reasonable steps to protect confidential information relating to another subject. The department need not release the following records to the subject:

a. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

b. The identity of a person reporting suspected abuse to the department need not be disclosed to the subject. (See 441—subrule 175.41(2) and Iowa Code section 235A.19.)

c. The identity of a person providing information to the department need not be disclosed directly or indirectly to the subject of the information when that information is authorized to be held confidential pursuant to Iowa Code section 22.7(18).

d. Peace officers' investigative reports may be withheld from the subject, pursuant to Iowa Code section 22.7(5).

e. The department may withhold disclosure of confidential information when the department has reason to believe that disclosure of the information would cause substantial and irreparable harm and would not be in the public interest. The department may withhold disclosure to seek an injunction to restrain examination of the record according to procedures in Iowa Code section 22.8 or to notify the person who would be harmed to allow that person to seek an injunction.

f. The department may withhold information as otherwise authorized by law.

441—9.10(17A,22) Use and disclosure without consent of the subject. Open records are routinely disclosed without the consent of the subject. To the extent allowed by law, the department may also use and disclose confidential information without the consent of the subject or the subject's representative.

9.10(1) Internal use. Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

People affected by this rule include:

1. County-paid staff, field work students, and volunteers working under the direction of the department.

2. Council and commission members.

3. Policy review and advisory committees.

4. Consultants to the department.

9.10(2) Audits and health oversight activities.

a. Audits. Information concerning program expenditures and client eligibility is released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies when those agencies provide program funds.

b. Health oversight activities. The department shall disclose protected health information to the Secretary of Health and Human Services to investigate or determine the department's compliance with federal HIPAA regulations.

(1) Except as specified in paragraph 9.10(2) "c," the department may also use protected health information, or disclose it to a health oversight agency, for other health oversight activities authorized by law. Health oversight activities include audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of:

1. The health care system;

2. Government benefits programs for which protected health information is relevant to client eligibility;

3. Organizations subject to government regulatory programs for which protected health information is necessary for determining compliance with program standards; or

4. Organizations subject to civil rights laws for which protected health information is necessary for determining compliance.

(2) If a health oversight activity or investigation is conducted in conjunction with an oversight activity or investigation relating to a claim for public benefits not related to health, the joint activity or investigation shall be considered a health oversight activity for purposes of subrule 9.10(2).

c. Exception to health oversight activities. For the purpose of the disclosures permitted by paragraph 9.10(2) "b," a health oversight activity shall not include an investigation or other activity in which the subject is also the subject of the investigation or activity, unless the investigation or other activity directly relates to:

(1) The receipt of health care;

- (2) A claim for public health benefits; or
- (3) Qualification for or receipt of public benefits or services, when a patient's health is integral to the claim for public benefits or services.

9.10(3) Program review. Information concerning client eligibility and benefits is released to state or federal officials responsible for determining whether the department is operating a program lawfully. These officials include the ombudsman office under Iowa Code section 2C.9, the auditor of state under Iowa Code section 11.2, the Office of Inspector General in the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services.

9.10(4) Contracts and agreements with agencies and persons.

a. The department may enter into contracts or agreements with public or private agencies, such as the department of inspections and appeals, and business associates, such as, but not limited to, the Iowa Medicaid enterprise units, in order to carry out the department's official duties. Information necessary to carry out these duties may be shared with these agencies. The department may disclose protected health information to a business associate and may allow a business associate to create or receive protected health information on its behalf, if the department obtains satisfactory assurance that the business associate will appropriately safeguard the information.

b. The department may enter into agreements to share information with agencies administering federal or federally assisted programs which provide assistance or services directly to persons on the basis of need. Only information collected in the family investment program, the child care assistance program, the food assistance program, the refugee resettlement program, or the child support recovery program may be shared under these agreements.

c. To meet federal income and eligibility verification requirements, the department has entered into agreements with the department of workforce development, the United States Internal Revenue Service, and the United States Social Security Administration.

The department obtains information regarding persons whose income or resources are considered in determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, child care assistance, food assistance, Medicaid, state supplementary assistance and foster care. Identifying information regarding clients of these programs is released to these agencies. The information received may be used for eligibility and benefit determinations.

d. To meet federal requirements under the Immigration Reform and Control Act of 1986 (IRCA) relating to the Systematic Alien Verification for Entitlements (SAVE) program, the department has entered into an agreement with the Bureau of Citizenship and Immigration Service (BCIS). Under the agreement, the department exchanges information necessary to verify alien status for the purpose of determining eligibility and the amount of benefits for the family investment program, refugee cash assistance, food assistance, Medicaid, state supplementary assistance and foster care assistance. Identifying information regarding these subjects is released to the BCIS. The information received may be used for eligibility and benefit determinations.

e. The department has entered into an agreement with the department of workforce development to provide services to family investment program clients participating in the PROMISE JOBS program as described at 441—Chapter 93. Information necessary to carry out these duties shall be shared with the department of workforce development, as well as with its subcontractors.

The department has entered into an agreement with the department of human rights to provide services to family investment program clients participating in the family development and self-sufficiency program as described at 441—Chapter 165. Information necessary to carry out these duties shall be shared with the department of human rights, as well as with that agency's subcontractors.

f. State legislation requires that all emergency assistance households apply for and accept benefits for which they may qualify from the energy assistance, county general relief and veteran's affairs programs before approval for emergency assistance. To meet this requirement, the department may enter into agreements with the agencies that administer these programs under which they may provide services to emergency assistance households as described at 441—Chapter 58. Information necessary to carry out these duties shall be shared with these agencies.

g. The department has entered into an agreement with the department of education, vocational rehabilitation, disability determination services, to assist with Medicaid disability determinations.

h. The department has entered into an agreement with the department of education to share information that assists both schools and department clients in carrying out the annual verification process required by the United States Department of Agriculture, Food and Nutrition Service. That federal agency requires the department of education and local schools to verify eligibility of a percentage of the households approved for free-meal benefits under the school lunch program.

When a department office receives a written request from the local school, the department office responds in writing with the current family investment program and food assistance program status of each recipient of free meals listed in the request. Other client-specific information is made available only with written authorization from the client.

9.10(5) Release for judicial and administrative proceedings. Information is released to the court as required in Iowa Code sections 125.80, 125.84, 125.86, 229.8, 229.10, 229.13, 229.14, 229.15, 229.22, 232.48, 232.49, 232.52, 232.71B, 232.81, 232.97, 232.98, 232.102, 232.111, 232.117 and 235B.3.

a. The department may disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal, provided that the department discloses only the protected health information expressly authorized by the order and the court makes the order knowing that the information is confidential.

b. When a court subpoenas information that the department is prohibited from releasing, the department shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

9.10(6) Fraud. Information concerning suspected fraud or misrepresentation to obtain department services or assistance is disclosed to the department of inspections and appeals and to law enforcement authorities.

9.10(7) Service referrals. Information concerning clients may be shared with purchase of service providers under contract to the department.

a. Information concerning the client's circumstances and need for service is shared with prospective providers to obtain placement for the client. If the client is not accepted for service, all written information released to the provider shall be returned to the department.

b. When the information needed by the provider is mental health information or substance abuse information, the subject's specific consent is required in subrule 9.3(4).

9.10(8) Medicaid billing. Only the following information shall be released to bona fide providers of medical services in the event that the provider is unable to obtain it from the subject and is unable to complete the Medicaid claim form without it:

- a. Patient identification number.
- b. Health coverage code as reflected on the subject's medical card.
- c. The subject's date of birth.
- d. The subject's eligibility status for the month that the service was provided.
- e. The amount of spenddown.
- f. The bills used to meet spenddown.

9.10(9) County billing. Information necessary for billing is released to county governments that pay part of the cost of care for intermediate care facility services for the mentally retarded under 441—subrule 82.14(2) or Medicaid waiver services under rule 441—83.70(249A) or 441—83.90(249A). This information includes client names, identifying numbers, provider names, number of days of care, amount of client payment, and amount of payment due.

9.10(10) Child support recovery. The child support recovery unit has access to information from most department records for the purpose of establishing and enforcing support obligations. Information about absent parents and recipients of child support services is released according to the provisions of Iowa Code chapters 234, 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, 598, 600B, and any other support chapter. Information is also released to consumer reporting agencies as specified in rule 441—98.116(252B).

9.10(11) *Refugee resettlement program.* Contacts with both sponsor and resettlement agencies are made as a part of the verification process to determine eligibility or the amount of assistance. When a refugee applies for cash or Medicaid, the refugee's name, address, and telephone number are given to the refugee's local resettlement agency.

9.10(12) *Abuse investigation.* The central abuse registry disseminates child abuse information and dependent adult abuse information as provided in Iowa Code sections 235A.15 and 235B.7, respectively. Reports of child abuse and dependent adult abuse investigations are submitted to the county attorney as required in Iowa Code sections 232.71B and 235B.3. Results of the investigation of a report by a mandatory reporter are communicated to the reporter as required in Iowa Code sections 235A.17(2) and 235A.15(2) "b"(5).

9.10(13) *Foster care.* Information concerning a child's need for foster care is shared with foster care review committees or foster care review boards and persons named in the case permanency plan.

9.10(14) *Adoption.* Adoptive home studies completed on families who wish to adopt a child are released to licensed child-placing agencies, to the United States Immigration and Naturalization Service, and to adoption exchanges. Information is released from adoption records as provided in Iowa Code sections 600.16 and 600.24.

9.10(15) *Disclosures to law enforcement.*

a. Disclosures by workforce members who are crime victims. The department is not considered to have violated the requirements of this chapter if a member of its workforce who is the victim of a criminal act discloses confidential information to a law enforcement official, provided that:

(1) The confidential information disclosed is about the suspected perpetrator of the criminal act and intended for identification and location purposes; and

(2) The confidential information disclosed is limited to the following information:

1. Name and address.

2. Date and place of birth.

3. Social security number.

4. ABO blood type and Rh factor.

5. Type of injury.

6. Date and time of treatment.

7. Date and time of death, if applicable.

8. A description of distinguishing physical characteristics, including height, weight, gender, race, hair and eye color, presence or absence of facial hair (beard or moustache), scars, and tattoos.

b. Crime on premises. The department may disclose to a law enforcement official protected health information that the department believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the department.

c. Decedents. The department may disclose protected health information to a law enforcement official about a subject who has died when the death resulted from child abuse or neglect or the death occurred in a department facility.

d. Other. The department may disclose confidential information to a law enforcement official when otherwise required or allowed by this chapter, such as disclosures about victims of child abuse or neglect; disclosures to avert a threat to health or safety, or to report suspected fraud; disclosures required by due process of law, such as disclosures for judicial and administrative proceedings; or other disclosures required by law.

9.10(16) *Response to law enforcement.* The address of a current recipient of family investment program benefits may be released upon request to a federal, state or local law enforcement officer if the officer provides the name of the recipient, and the officer demonstrates that:

a. The recipient is a fugitive felon who is fleeing prosecution, custody or confinement after conviction under state or federal law, or who is a probation or parole violator under state or federal law, or

b. The recipient has information that is necessary for the officer to conduct the officer's official duties, and

c. The location or apprehension of the recipient is within the officer's official duties.

9.10(17) Research. Information that does not identify individual clients may be disclosed for research purposes with the consent of the division administrator responsible for the records. The division administrator shall investigate the credentials of the researcher.

a. Mental health information may be disclosed for purposes of scientific research as provided in Iowa Code section 228.5, subsection 3, and section 229.25. Requests to do research involving records of a department facility shall be approved by the designated authority.

b. Abuse registry information may be disclosed for research purposes as provided in rules 441—175.42(235A) and 441—176.12(235B) and authorized by Iowa Code sections 235A.15(2) “e”(1) and 235B.6(2) “e”(1).

c. For research relating to protected health information, the researcher shall provide the department with information about the nature of the research, the protocol, the type of information being requested, and any other relevant information that is available concerning the request. If the researcher feels that contact with the subject is needed, the researcher shall demonstrate to the department that the research cannot be conducted without contact with the subject. The researcher shall pay for the costs of obtaining authorizations needed to contact the subjects and for the cost of files and preparation needed for the research.

9.10(18) Threat to health or safety.

a. All programs. A client’s name, identification, location, and details of a client’s threatened or actual harm to department staff or property may be reported to law enforcement officials. Other information regarding the client’s relationship to the department shall not be released.

When a department staff person believes a client intends to harm someone, the staff person may warn the intended victim or police or both. Only the name, identification, and location of the client and the details of the client’s plan of harm shall be disclosed.

b. Protected health information. The department may, consistent with applicable law and standards of ethical conduct, use or disclose protected health information, if the department, in good faith, believes the use or disclosure:

(1) Is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public; and is to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat; or

(2) Is necessary for law enforcement purposes as described in this chapter.

c. When the department uses or discloses protected health information pursuant to paragraph 9.10(18) “b,” the department is considered to have acted in good faith if the action is based on the department’s actual knowledge or on a credible representation by a person with apparent knowledge or authority.

9.10(19) Required by law.

a. Information is shared with other agencies without a contract or written agreement when federal law or regulations require it.

b. The department may use or disclose protected health information to the extent that use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of the law.

c. State law shall preempt rules in this chapter about protected health information when any one of the following conditions exists:

(1) Exception granted by Secretary of Health and Human Services. A determination is made by the Secretary of Health and Human Services under 45 CFR 160.204 as amended to August 14, 2002, that the provision of state law:

1. Is necessary:

- To prevent fraud and abuse related to the provision of or payment for health care;
- To ensure appropriate state regulation of insurance and health plans to the extent expressly authorized by statute or regulation;
- For state reporting on health care delivery or costs; or

- For purposes of serving a compelling need related to public health, safety, or welfare, and, if a requirement under this chapter is at issue, the Secretary of Health and Human Services determines that the intrusion into privacy is warranted when balanced against the need to be served; or

2. Has as its principal purpose, the regulation of the manufacture, registration, distribution, dispensing, or other control of any controlled substances, as defined in 21 U.S.C. 802, or that is deemed a controlled substance by state law.

(2) State law more stringent. The provision of state law relates to the privacy of protected health information and is more stringent than a requirement of this chapter, within the meaning of “more stringent” found at 45 CFR 160.202 as amended to August 14, 2002.

(3) Reporting requirements. The provision of state law, including state procedures established under the law, as applicable, provides for the reporting of disease or injury, child abuse, birth, or death, or for the conduct of public health surveillance, investigation, or intervention.

(4) Requirements related to audits, monitoring, evaluation, licensing, and certification. The provision of state law requires a health plan to report, or to provide access to, information for the purpose of management audits, financial audits, program monitoring and evaluation, or the licensure or certification of facilities and persons.

9.10(20) Reserved.

9.10(21) *Treatment, payment, or health care operations.*

a. The department may use or disclose protected health information for treatment, payment, or health care operations, as described in this paragraph, except for psychotherapy notes, which are subject to the limits described in paragraph 9.10(21) “b.” The use or disclosure shall be consistent with other applicable requirements of this chapter.

(1) The department may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) The department may disclose protected health information for treatment activities of a health care provider.

(3) The department may disclose protected health information to another covered entity or a health care provider for the payment activities of the person or organization that receives the information.

(4) The department may disclose protected health information to another covered entity for health care operations activities of the covered entity that receives the information, if each covered entity either has or had a relationship with the person who is the subject of the protected health information being requested, the protected health information pertains to the relationship, and the disclosure is:

1. For a purpose listed in numbered paragraph “1” or “2” of the definition of health care operations in 45 CFR 164.501 as amended to August 14, 2002; or

2. For the purpose of health care fraud and abuse detection or compliance.

b. The department may use or disclose psychotherapy notes without an authorization for any one of the following reasons:

(1) To carry out the following treatment, payment, or health care operations:

1. Use by the originator of the psychotherapy notes for treatment.

2. Use or disclosure by the department for its own training programs in which students, trainees, or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family, or individual counseling.

3. Use or disclosure by the department to defend itself in a legal action or other proceeding brought by the subject.

(2) When required by the Secretary of Health and Human Services to investigate or determine the department’s compliance with federal HIPAA regulations.

(3) For health oversight activities, as described at subrule 9.10(2), with respect to the oversight of the originator of the psychotherapy notes.

(4) When necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public as described at subrule 9.10(18).

(5) When required by law as described at subrule 9.10(19).

(6) To disclose protected health information in the designated record set to a coroner or medical examiner as described at subrule 9.10(24).

9.10(22) *Public health activities.* The department may disclose protected health information for the public health activities and purposes described in this subrule. This disclosure is in addition to any other disclosure to a public health authority allowed by this chapter, such as a disclosure to report child abuse or neglect. For the purposes of this subrule, a public health authority includes state and local health departments, the Food and Drug Administration (FDA), and the Centers for Disease Control and Prevention.

a. The department may disclose protected health information to a public health authority that is authorized by law to collect or receive the information for the purpose of preventing or controlling disease, injury, or disability.

(1) The information that may be disclosed includes, but is not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions.

(2) At the direction of a public health authority, the department may also report this information to an official of a foreign government agency that is acting in collaboration with a public health authority.

b. The department may disclose protected health information to a person or organization that is subject to the jurisdiction of the FDA for public health purposes related to the quality, safety, or effectiveness of an FDA-regulated product or activity for which that person or organization has responsibility. These purposes include:

(1) To collect or report adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product).

(2) To track FDA-regulated products.

(3) To enable product recalls, repairs, or replacement, or lookback (including locating and notifying subjects who have received products that have been recalled, withdrawn, or are the subject of lookback).

(4) To conduct postmarketing surveillance.

c. The department may disclose protected health information to a person who is at risk of contracting or spreading a disease or condition. The disclosure must be necessary to carry out public health interventions or investigations or to notify a person that the person has been exposed to a communicable disease to prevent or control the spread of the disease.

9.10(23) *Victims of domestic violence.* The department shall disclose confidential information about an individual whom the department reasonably believes to be a victim of domestic violence when required by state law.

9.10(24) *Disclosures to coroners, medical examiners, and funeral directors.*

a. Coroners and medical examiners. The department may disclose protected health information about a subject that is contained in the designated record set to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law.

b. Funeral directors. The department may disclose protected health information about a subject that is contained in the designated record set to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the decedent. If necessary for funeral directors to carry out their duties, the department may disclose the protected health information before, and in reasonable anticipation of, the subject's death.

9.10(25) *Disclosures for cadaveric organ, eye or tissue donation purposes.* The department may disclose protected health information about a subject that is contained in the designated record set to organ procurement organizations or other organizations engaged in the procurement, banking, or transplantation of cadaveric organs, eyes, or tissue for the purpose of facilitating organ, eye or tissue donation and transplantation. The department shall make a disclosure only when the disclosure has been approved by the deceased subject's authorized legal representative and there is evidence that the decedent had given approval for organ, eye, or tissue donation procedures before the decedent's death.

9.10(26) *Specialized government functions.* Protected health information may be shared under the circumstances described at 45 CFR 164.512, paragraph "k," as amended to August 14, 2002, if

otherwise allowable under state law, such as sharing protected health information with the Social Security Administration in determining Medicaid eligibility for supplemental security income applicants and recipients.

9.10(27) *Whistle blowers.* The department is not considered to have violated the requirements of this chapter when a member of its workforce or a business associate discloses protected health information, provided that:

a. The workforce member or business associate has a good-faith belief that the department or a business associate has engaged in conduct that is unlawful or otherwise violates professional or clinical standards, or has provided care, services, or conditions that potentially endanger one or more patients, workers, or the public; and

b. The disclosure is made to one of the following:

(1) A health oversight agency or public health authority authorized by law to investigate or oversee conduct or conditions for the purpose of reporting the allegation of failure to meet professional standards or misconduct.

(2) An appropriate health care accreditation organization.

(3) An attorney retained by or on behalf of the workforce member or business associate for the purpose of determining the legal options of the workforce member or business associate.

9.10(28) *Secondary to a use or disclosure of protected health information.* The department may use or disclose protected health information that is secondary to a use or disclosure otherwise permitted or required by these rules, such as when a visitor in a facility overhears a doctor speaking to a subject about the subject's health.

9.10(29) *De-identified data or a limited data set.*

a. De-identified information. The department may use or disclose protected health information to create information that is de-identified under the conditions specified in 45 CFR 164.514, paragraphs "a" through "c," as amended to August 14, 2002.

b. Limited data set. The department may use or disclose a limited data set under the conditions specified at 45 CFR 164.514, paragraph "e," as amended to August 14, 2002, when the department enters into a data use agreement for research, public health, or health care operations.

[ARC 5417C, IAB 2/10/21, effective 4/1/21]

441—9.11(22) Availability of records. This rule lists the department records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Department records are listed by category according to the legal basis for confidential treatment (if any). A single record may contain information from several categories.

The department administers several federally funded programs and is authorized by Iowa Code section 22.9 to enforce confidentiality standards from federal law and regulation as required for receipt of the funds. Where federal authority is cited in this rule, the department has determined that the right to examine and copy public records under Iowa Code section 22.2 would cause the denial of funds, services, or essential information from the United States government that would otherwise be available to the department.

The chart indicates whether the records in this category contain personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations are used in the chart as follows:

<u>Code</u>	<u>Meaning</u>
O	The records are open for public inspection.
C	The records are confidential and are not open to public inspection.
O/C	The record is partly open and partly confidential.
PI	Personally identifiable information
NA	Not applicable

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Records of council, commission and statutory committees	O/C	Iowa Code 21.5(4)	No	NA
Pharmaceutical and therapeutics committee records (including information related to the prices manufacturers or wholesalers charge for pharmaceuticals)	O/C	42 U.S.C. §1396r(8)(b)(3)(D) and Iowa Code 550	No	NA
Rule making	O	NA	No	NA
Declaratory order records	O/C	Iowa Code 217.30	No	NA
Rules and policy manuals	O	NA	No	NA
State plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical reports	O	NA	No	NA
Financial and administrative records	O	NA	No	NA
Personnel records	O/C	Iowa Code 22.7(11)	Yes	Iowa Code 217.1
Contracts and interagency agreements	O	NA	No	NA
Grant records				
• Child abuse prevention	O	NA	No	NA
• Mental health/mental retardation general allocation	O	NA	No	NA
• Mental health/mental retardation special allocation	O	NA	No	NA
• Developmental disabilities basic	O	NA	No	NA
• Alcohol/drug abuse/mental health block	O	NA	No	
• National Institute of Mental Health	O	NA	No	
• Pregnancy prevention	O	NA	No	NA
• Juvenile community-based services	O	NA	No	NA
• Runaway prevention	O	NA	No	NA
Collection service center payment records	C	Iowa Code 252B.9(2); 42 U.S.C. §654a(d); 45 CFR §307.13	Yes	Iowa Code 252B.9, 252B.13A, 252B.16
Licensing, registration and approval				
• Juvenile detention and shelter care facilities	O/C	Iowa Code 217.30	No	NA
• Adoption investigators	O	NA	Yes	Iowa Code 600.2
• Supervised apartment living arrangement	O	NA	No	NA
• Mental health providers	O	NA	No	NA
• Family-life homes	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Foster care facilities	O/C	Iowa Code 237.9	Yes	Iowa Code 237
• Child care facilities	O/C	Iowa Code 237A.7	Yes	Iowa Code 237A
• Child-placing agencies	O/C	Iowa Code 238.24	No	NA
• Health care facilities	O/C	Iowa Code 135C.19	No	NA
Appeal records	O/C	Iowa Code 217.30	Yes	Iowa Code 217.1
Litigation files	O/C	Iowa Code 217.30, 22.7(4), 622.10	Yes	Iowa Code 217.1

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Service provider records				
• Purchase of service providers	O/C	Iowa Code 217.30	Yes	Iowa Code 234.6
• Medicaid providers	O/C	Iowa Code 217.30, 42 U.S.C. §1396a(7), 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• Residential care facilities	O/C	Iowa Code 217.30	No	NA
All service or assistance client records	C	Iowa Code 217.30	Yes	Iowa Code 217.1
• Family investment program	C	Iowa Code 217.30; 42 U.S.C. §602(a)(1) and §1306a	Yes	Iowa Code 239B
• Child care assistance	C	Iowa Code 237A.13	Yes	Iowa Code 237A
• State Supplementary Assistance	C	Iowa Code 217.30	Yes	Iowa Code 249
• Medicaid	C	Iowa Code 217.30; 42 U.S.C. §1396a(7); 42 CFR 431.300 to 307 as amended to November 13, 1996	Yes	Iowa Code 249A.4
• HAWK-I	C	Iowa Code 514I; 42 CFR 457.1110 as amended to January 11, 2001	Yes	Iowa Code 514I.4
• Food assistance	C	Iowa Code 217.30; 7 U.S.C. §2020(e)8 and 7 CFR 272.1 (c) and (d) as amended to January 1, 1987	Yes	Iowa Code 234.6
• Foster care	C	Iowa Code 237.9	Yes	Iowa Code 237.3 to 237.5
• Title IV-E foster care and adoption assistance	C	Iowa Code 217.30; 42 U.S.C. §671(a)(8); 45 CFR 1355.30(1) as amended to November 23, 2001	Yes	Iowa Code 217.1, Iowa Code 600.17 to 600.22
• Refugee resettlement	C	Iowa Code 217.30; 45 CFR 400.27 as amended to March 22, 2000	Yes	Iowa Code 217.1
• Substance abuse	C	Iowa Code 125.37 and 125.93; 42 U.S.C. §29 dd. 3 and ee. 3; 42 CFR Part 2 as amended to October 1, 2002; 38 U.S.C. §4132	Yes	Iowa Code 125, 218, 219 and 234.6 and 249A.4
• State institution resident records	C	Iowa Code 218.22, 229.24 and 229.25	Yes	Iowa Code 218.1
Program records				
• Child support recovery	C	Iowa Code 252B.9 and 252G.5; 42 U.S.C. §654(26), 42 U.S.C. §654a(d); 45 CFR §303.21 and 307.13	Yes	Iowa Code 252A, 252B, 252C, 252D, 252E, 252F, 252G, 252H, 252I, 252J, 252K, and 144.13, 144.26, 232.147, 234.39, 595.4, 598.22B, and 600.16A
• Child abuse	C	Iowa Code 235A.13, 235A.15, 235A.16, and 235A.17	Yes	Iowa Code 235A.14
• Dependent adult abuse	C	Iowa Code 235B.1, par 4(a)	Yes	Iowa Code 235B.1
• Adoption	C	Iowa Code 600.16 and 600.24	Yes	Iowa Code 600.8 and 600.16
Client records may contain information from restricted sources:				

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Federal tax returns	C	Iowa Code 422.20(2); 26 U.S.C. §6103	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 252B
• Department of revenue	C	Iowa Code 421.17, 422.20(1)	Yes	Iowa Code 252B.5 and 252B.9
• Department of workforce development	C	Iowa Code 217.30; 42 U.S.C. §503(d) and (e)	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A, 249C, 252B.9
• Income and eligibility verification system	C	Iowa Code 217.30; 42 U.S.C. §1230b-7	Yes	Iowa Code 217.1, 234.6(7), 239B, 249A
• Department of public safety	C	Iowa Code 692.2, 692.3, 692.8 and 692.18	Yes	Iowa Code 237.8, 237A.5, 252B.9
• United States Department of Health and Human Services	C	Iowa Code 217.30; 42 CFR Part 401.134(c) as amended to October 1, 2002	Yes	Iowa Code 217.1, 234.6(7), 239B, 249, 249A, 252B
• Peer review organization	C	Iowa Code 217.30; 42 U.S.C. §1320c-9	Yes	Iowa Code 249A.4
• Juvenile court	C	Iowa Code 232.48, 232.97 and 232.147 to 232.151	Yes	Iowa Code 232 and 234.6
Other information				
• Mental health information	C	Iowa Code 228.2(1)	Yes	Iowa Code 217, 219, 222, 229
• Information received by a licensed social worker	C	Iowa Code 154C.5	Yes	Iowa Code 217.1
• Debtors to the department	C	Iowa Code 537.7103(3)	Yes	Iowa Code 217.1
• Health care facility complaint and citation records	C	Iowa Code 135C.19	No	Iowa Code 249A.4, 135C.19
• Hospital records, medical records, and professional counselor records	C	Iowa Code 22.7(2)	Yes	Iowa Code 218, 219, 222, 229
• Privileged communication and work products of attorneys representing the department	C	Iowa Code 22.7(4), Iowa Code of Professional Responsibility for Lawyers, Canon 4	No	NA
• Identity of volunteer informant who does not consent to release	C	Iowa Code 22.7(18)	No	Iowa Code 217.1
• School records	C	Iowa Code 22.7(1)	Yes	Iowa Code 218.1 and 234.6
• Library circulation records	C	Iowa Code 22.7(13) and (14)	No	Iowa Code 217.1
• Sealed bids prior to public opening	C	Iowa Code 72.3	No	NA
• Protected health information	C	HIPAA	Yes	Iowa Code 218.1, 249A.4, 514I.4

[ARC 1262C, IAB 1/8/14, effective 3/1/14]

441—9.12(22,252G) Personally identifiable information. The confidentiality provisions affecting records described in this rule are addressed in rule 441—9.11(22).

9.12(1) Nature and extent. The personally identifiable information collected by the department varies by the type of record. The nature and extent of personally identifiable information is described below:

a. Recipients of assistance. Several different types of department records contain personally identifiable information about recipients of assistance programs such as food assistance, Medicaid, the family investment program, child care assistance, state supplementary assistance, refugee cash and medical assistance, and commodity supplemental foods.

(1) Client case file. Local office case files contain identifying information, demographic information, household composition, and income and resource information about applicants for and recipients of assistance, as well as any other persons whose circumstances must be considered in

determining eligibility. Records may contain information about employment, disability, or social circumstances. Records identify the kind and amount of benefits received and what proof was obtained to verify the recipient's eligibility. Case files contain correspondence, appeal requests and decisions, and documentation of department actions.

(2) Local office administrative records. Client names and program data are kept in card files, appointment logs, worker case lists, and issuance records.

(3) Data processing systems. Client identifying information, eligibility data, and payment data are kept in the following systems. Some of these records are also kept on microfiche.

<u>System</u>	<u>Function</u>
Automated Benefit Calculation System	Determines eligibility for FIP, food assistance, Medicaid
Automated Child Abuse and Neglect System	Inactive child abuse/neglect system
Appeals Logging and Tracking System	Tracks client appeals
BCCT Program	Establishes Medicaid eligibility for breast and cervical cancer clients
Change Reporting System	Tracks client-reported changes and produces forms needed for client-reported changes
Diversion System	Tracks clients using diversion benefits
Electronic Payment Processing and Inventory Control System	Electronically issues food assistance
Eligibility Tracking System	Tracks clients' FIP eligibility and hardship status
Family and Children's Services System	Tracks foster care, adoption, family-centered and family preservation services
Food Stamps Case Reading Application	Food assistance accuracy tool used to record case reading information
Health Insurance Premium Payment System	Health insurance premium payment
Iowa Collection and Reporting System	Tracks child support recovery processes
Iowa Central Employee Registry	Child support new hire reporting system
Iowa Eligibility Verification System	Federal social security number verification and benefits
Individualized Services Information System	Used to establish facility eligibility, process data to and from ABC and Medicaid fiscal agent, establish waiver services, providers, and eligibility
Issuance History	Displays benefit issuances for FIP and food assistance
KACT System	Authorizes foster care service units
MEPD Premium Payment Program	Accounting system for billing and payment for Medicaid for employed people with disabilities program
Managed Health Care Program	Assigns managed health care providers to clients
Medicaid Management Information Systems	Process clients' Medicaid claims and assign Medicaid coverage to clients
Overpayment Recoupment System	Used to recover money from FIP, food assistance, Medicaid, child care assistance, PROMISE JOBS, and hawki clients
Public Information Exchange	Data exchange between states
PJCASE	Iowa workforce development interface with PROMISE JOBS

<u>System</u>	<u>Function</u>
Purchase of Social Services System	Purchased services (mostly child care and in-home health clients)
Presumptive Eligibility Program	Establishes Medicaid eligibility for presumptive eligibility clients
Quality Control System	Selects sample for quality control review of eligibility determination
RTS Claims Processing System	Processes rehabilitative treatment claims for federal match
State Data Exchange Display	State data exchange information for supplemental security income recipients
Social Security Buy-In System	Medicare premium buy-in
Social Services Reporting System	Services reporting system for direct and purchased services
Statewide Tracking of Assessment Reports	Tracks child abuse reports

(4) Quality control records. Files are developed containing data required to verify the correctness of department eligibility and benefit decisions for selected clients.

(5) Appeals. Records containing client eligibility and payment information are created by the department of inspections and appeals when a client (or, for Medicaid, a provider) requests a hearing on a department action.

(6) Fraud. When a client is suspected of fraud, the department of inspections and appeals generates an investigative record containing information pertinent to the circumstances of the case.

(7) Recoupment. When benefits have been overpaid, a record is established by the department of inspections and appeals concerning the circumstances of the overpayment and the client's repayment.

b. Recipients of social services. Several kinds of department records contain personally identifiable information about applicants for and recipients of direct or purchased social services.

(1) Client case records. Local offices create client case files containing identifying information and demographic information; income data; information substantiating the need for services, which may include medical, psychological or psychiatric reports; social history; the department evaluation of the client's situation; documentation of department actions; and provider reports. Records may contain court orders and reports.

(2) Local office administrative records. Client names and services data appear in records such as card files, case lists, and appointment logs.

(3) Data processing systems. Client identifying information, demographic data, and services eligibility data are stored in the service reporting system. The purchase of services system contains invoice and service payment data. The child and adult protection system contains information from abuse reports and investigations. Some of these records are also kept on microfiche.

(4) Appeals. Records containing client identifying information and eligibility information are created by the department of inspections and appeals when a client requests a hearing on a department action.

(5) Adoption records. The department keeps a master card file on all adoptions in Iowa as required in Iowa Code section 235.3, subsection 7. This record is also kept on microfilm.

The Iowa Adoption Exchange contains records on special needs children available for adoption and on families that have indicated an interest in adopting special needs children.

The department also keeps records on adoptions in which it has provided services. These files include the home study, information about the child, and legal documents. These records are also kept on microfiche.

(6) Abuse registry. Child and dependent adult abuse records contain names and information of the alleged victim and the victim's family, data on the reported abuse, details of injury, investigative data, name of alleged perpetrator, names of reporters, collateral contacts and findings.

(7) Interstate compact records. The department maintains records on placement of children across state lines. These records contain identifying information about the children and the conditions of their placement, as well as progress reports. Some of the records are kept on microfiche.

(8) Guardianship records. The department maintains records on all children under its guardianship. The records concern the children's characteristics and placements. Some of these records are kept on microfiche.

c. Institutions. Institution resident records may contain identifying and demographic information, medical and social histories, treatment records, treatment plans, educational information, admission procedures, financial accounts, county billings, residential unit notes, vocational information, economic data and information about personal effects. Some of this information is kept on microfiche.

Automated data processing systems associated with institutional client records include admission and discharge systems for the juvenile institutions and for the mental health and mental retardation institutions, institutional billing systems, client banking systems, and client data systems.

d. Child support recovery unit (CSRU) records. These records contain information such as client identifiers, demographic information, divorce decrees, child support orders, absent parent identifiers, employment history and physical characteristics of absent parents, payment history records, and termination of parental rights.

e. Collection services center. The collection services center maintains records of support orders issued or filed in Iowa that have been converted to the collection services center system. These records identify the person paying and the person receiving support, specify the support obligations, and contain a record of payments made. Most records are on an automated data processing system. Paper records may also be kept, including conversion documents, orders, and correspondence.

f. Contractor records for individual providers. Records of individual purchase of service and Medicaid providers contain information such as names of owners and employees, names of clients served, eligibility data, amounts of payment for clients, and kinds of services received by clients.

g. Regulatory files on individual providers. Files on persons who apply to be licensed, certified, registered, or approved by the department contain identifying information, a description of the person's operation or premises, and a department evaluation of the information collected. Files may contain data on criminal records and abuse registry records on the person and any employees. Files may contain information naming clients served (for example, in complaints or incident reports). Some of these records are also kept on microfilm.

h. Personnel files. The department maintains files containing information about employees, families and dependents, and applicants for paid or volunteer positions within the department. The files contain payroll records, biographical information, medical information pertaining to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding and information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship.

9.12(2) Data processing matching.

a. Internal. All data processing systems operated by the department which have comparable personally identifiable data elements permit the matching of personally identifiable information. (See subrule 9.12(1) for a description of these systems.) Matches which are routinely done include the following:

(1) Data from the service reporting system is matched with data from the purchase of service payment system for service eligibility and with the activity reporting system for cost allocation. Matches are also done with the state identification portion of the automated benefit calculation system.

(2) The automated benefit calculation system matches with the Medicaid eligibility system, the facility payment system, the child support collections system, the employment and training systems, the electronic payment processing and inventory control system, the eligibility tracking system, the Medicare buy-in system, the individualized services information system-waiver payment system, and the income eligibility and verification system.

(3) The Medicaid eligibility system matches information with the Medicaid management information system and the collection and recovery system.

b. External.

(1) The state data exchange matches information on department clients with records on recipients of supplemental security income.

(2) The Medicare buy-in system matches information with the Social Security Administration.

(3) The income and eligibility verification system matches information on department clients with income records from department of workforce development records on unemployment compensation and wages, tax records from the Internal Revenue Service, wage records and social security benefit records from the Social Security Administration, and public assistance records from other states.

(4) Data from the collections and reporting system is matched with state and federal tax records, and with client records on the automated benefit calculation system.

(5) Data on department clients is matched with the administering agency for the Workforce Investment Act and with private agencies working to help employers collect benefits under the work opportunity tax credit program.

(6) Reports on disqualified food stamp recipients from other states are received from the United States Department of Agriculture to ensure that recipients are not evading penalties by reapplying in Iowa.

(7) A list of recipients of benefits under the family investment program is released annually to the Internal Revenue Service for matching with records of dependents claimed.

(8) A list of applicants for and recipients of the family investment program (FIP), the Medicaid program, and the food assistance program is matched with records on Iowa motor vehicle registration files to assist in the identification of countable resources.

(9) The Medicaid management information system matches data on medical assistance recipients against data on insureds that is submitted by insurance carriers under rule 441—76.13(249A) in order to identify third-party payers for medical assistance recipients.

c. Centralized employee registry (CER) database. The CER receives data concerning employees and contractors who perform labor in Iowa. Information reported by Iowa employers about employees includes the employee's name, address, social security number, date of birth, beginning date of employment, whether health insurance is available, and when it may be available. Information reported by Iowa income payers about contractors is limited to the contractor's name, address, social security number, and date of birth, if known.

State agencies accessing the CER shall participate in proportionate cost sharing for accessing and obtaining information from the registry. Cost sharing shall include all costs of performing the match including costs for preparing the tapes and central processing unit time. Costs shall be specified in a 28E agreement with each agency. CER matches include the following data matches with:

(1) The child support collections and reporting system for the establishment and enforcement of child and medical support obligations.

(2) Other department of human services systems for the purpose of gathering additional information and verification for use in the determination of eligibility or calculation of benefits.

(3) The department of employment services for the determination of eligibility or calculation of unemployment benefits, and to monitor employer compliance with job insurance tax liability requirements.

(4) The department of workforce development to verify employment of participants in the PROMISE JOBS program.

(5) The department of revenue for the recoupment of debts to the state.

(6) The department of inspections and appeals for the recoupment of debts owed to the department of human services.

[ARC 5305C, IAB 12/2/20, effective 2/1/21]

441—9.13(217) Distribution of informational materials.

9.13(1) Requirements for distribution. All material sent or distributed to clients, vendors, or medical providers shall:

a. Directly relate to the administration of the program.

- b. Have no political implications.
- c. Contain the names only of persons directly connected with the administration of the program.
- d. Identify them only in their official capacity with the agency.

9.13(2) *Distribution prohibited.* The department shall not distribute materials such as holiday greetings, general public announcements, voting information, and alien registration notices.

9.13(3) *Distribution permitted.* The department may distribute materials directly related to the health and welfare of clients, such as announcements of free medical examinations, availability of surplus food, and consumer protection information.

441—9.14(17A,22) Special policies and procedures for protected health information.

9.14(1) *Minimum necessary.* When using or disclosing protected health information or when requesting protected health information from another covered entity, the department shall make reasonable efforts, as described in paragraphs 9.14(1)“a” through “e,” to limit protected health information to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request.

a. This requirement does not apply in the following circumstances:

- (1) Disclosures to or requests by a health care provider for treatment.
- (2) Uses or disclosures made to the subject.
- (3) Uses or disclosures made pursuant to an authorization.
- (4) Disclosures made to the Secretary of Health and Human Services.
- (5) Uses or disclosures that are required by law.
- (6) Uses or disclosures that are required for compliance with this chapter.

b. The department shall take the following actions:

(1) Identify those persons or classes of persons, as appropriate, in its workforce who need access to protected health information to carry out their duties.

(2) For each person or class of persons, identify the category or categories of protected health information to which access is needed and any conditions appropriate to the access.

(3) Make reasonable efforts to limit the access of these persons or classes.

c. For any type of disclosure that it makes on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the amount of the protected health information disclosed to that reasonably necessary to achieve the purpose of the disclosure.

For all other disclosures, the department shall develop criteria designed to limit the protected health information disclosed to the information reasonably necessary to accomplish the purpose for which disclosure is sought. The department shall review requests for disclosure on an individual basis in accordance with the criteria.

The department may rely, if reasonable under the circumstances, on a requested disclosure as the minimum necessary for the stated purpose when:

(1) Making permitted disclosures to a public official, provided the public official indicates that the information requested is the minimum necessary for the stated purposes;

(2) The information is requested by another covered entity; or

(3) The information is requested for the purpose of providing professional services to the department by a professional who is a workforce member or business associate of the department if the professional indicates that the information requested is the minimum necessary for the stated purpose.

d. Minimum necessary requests.

(1) When requesting information from other covered entities, the department shall limit any request for protected health information to that which is reasonably necessary to accomplish the purpose for which the request is made.

(2) For a request that is made on a routine and recurring basis, the department shall implement policies and procedures (which may be standard protocols) that limit the protected health information requested to the amount reasonably necessary to accomplish the purpose for which the request is made.

(3) For all other requests, the department shall develop criteria designed to limit the request for protected health information to the information reasonably necessary to accomplish the purpose for which the request is made and to review requests for disclosure on an individual basis in accordance with the criteria.

e. For all uses, disclosures, or requests to which the minimum necessary requirements apply, the department shall not use, disclose or request an entire medical record, except when the entire medical record is specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure, or request.

9.14(2) *Uses and disclosures for premium rating and related purposes.* If a health plan receives protected health information for the purpose of premium rating or other activities relating to the creation, renewal, or replacement of a contract of health insurance or health benefits, and if the health insurance or health benefits are not placed with the health plan, the health plan shall not use or disclose the protected health information for any other purpose, except as may be required by law.

9.14(3) *Verification and documentation.*

a. Before any disclosure of protected health information, the department shall obtain verification or documentation as follows:

(1) Verify the identity of a person requesting protected health information and the person's authority to access protected health information, if the department does not know the identity or authority of the person. This requirement is waived for disclosures to persons involved in the subject's care or for notification purposes, as described at subrule 9.7(3).

(2) Obtain any oral or written documentation, including statements and representations, from the person requesting the protected health information when this is a condition of the disclosure under this chapter.

b. The following constitute appropriate verification or documentation, if reasonable under the circumstances:

(1) Documentation, statements, or representations. The department may rely on documentation, statements, or representations that, on their face, meet the applicable requirements.

(2) Identity of public officials. When disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify identity:

1. In-person presentation of an agency identification badge, other official credentials, or other proof of government status.

2. A written request on the appropriate government letterhead.

3. A written statement on appropriate government letterhead that the person is acting under the government's authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes the person is acting on behalf of the public official.

(3) Authority of public officials. When the disclosure of protected health information is requested by a public official or a person acting on behalf of the public official, the department may rely on any of the following to verify authority:

1. A written statement of the legal authority under which the information is requested.

2. If a written statement would be impracticable, an oral statement of the legal authority.

3. An order issued by a judicial or administrative tribunal.

(4) Exercise of professional judgment. The requirements of this subrule are met if the department relies on the exercise of professional judgment in use or disclosure to persons involved in the subject's care or for notification purposes, in accordance with subrule 9.7(3), or acts on a good-faith belief in making a disclosure to avert a serious threat to health or safety, in accordance with subrule 9.10(18).

9.14(4) *Notice of privacy practices for protected health information.* A subject has a right to adequate notice of the uses and disclosures of protected health information that may be made by the department, and of the subject's rights and the department's legal duties with respect to protected health information.

9.14(5) Right to receive an accounting of disclosures. Within the limits described in this subrule, a subject has a right to receive an accounting of the disclosures of protected health information listed in paragraph 9.14(5)“a,” including disclosures to or by business associates of the department. A subject shall request an accounting using Form 470-3985, Request for a List of Disclosures.

a. Disclosures that may be included in an accounting. A subject’s right to receive an accounting of disclosures made by the department, or to or by business associates of the department, is limited to the following disclosures that do not require an authorization or an opportunity for the subject to agree or object:

- (1) For health oversight activities described at subrule 9.10(2).
- (2) For judicial and administrative proceedings described at subrule 9.10(5).
- (3) For law enforcement purposes described at subrule 9.10(15).
- (4) For averting a threat to health or safety described at subrule 9.10(18).
- (5) To meet requirements of law described at subrule 9.10(19).
- (6) For public health activities described at subrule 9.10(22).
- (7) For disclosures about suspected victims of domestic violence described at subrule 9.10(23).
- (8) For disclosures about suspected victims of abuse or neglect described in 441—Chapter 9.
- (9) To coroners, medical examiners, and funeral directors described at subrule 9.10(24).
- (10) For cadaveric organ, eye, or tissue donation described at subrule 9.10(25).
- (11) For specialized government functions described at subrule 9.10(26), except those made for national security or intelligence purposes.
- (12) By whistle blowers as described at subrule 9.10(27).

b. Content of the accounting. The department shall provide the subject who submits Form 470-3985, Request for a List of Disclosures, with a written accounting of disclosures that meets the following requirements.

(1) The accounting shall include disclosures of protected health information that occurred during the six years (or the shorter time requested by the subject) before the date of the request. However, disclosures that occurred before April 14, 2003, are not included in an accounting.

(2) Except for limitations regarding multiple disclosures to the same person or organization, the accounting shall include for each disclosure:

1. The date of the disclosure.
2. The name of the organization or person who received the protected health information and, if known, the address of the organization or person.
3. A brief description of the protected health information disclosed.
4. A brief statement of the purpose of the disclosure that reasonably informs the subject of the basis for the disclosure or, instead of the statement, a copy of a written request for a disclosure.

(3) If, during the period covered by the accounting, the department has made multiple disclosures of protected health information to a person or organization requesting a disclosure, the accounting may, with respect to the multiple disclosures, provide:

1. The information required by subparagraph 9.14(5)“b”(2), for the first disclosure during the accounting period;
2. The frequency, periodicity, or number of the disclosures made during the accounting period; and
3. The date of the last disclosure during the accounting period.

c. Time limits for providing the accounting. The department shall act on the subject’s request for an accounting no later than 60 days after receipt of a request, as follows:

- (1) The department shall provide the subject with the accounting requested; or
- (2) If the department is unable to provide the accounting within these 60 days, the department may extend the due date one time, for a period not to exceed 30 days. In order to extend the due date, the department shall provide the subject with a written statement of the reasons for the delay and the date by which the department shall provide the accounting. The department shall provide this written statement within the 60-day period after receipt of the request for an accounting.

d. Fee for accounting. The department shall provide to a subject one accounting without charge in any 12-month period. The department may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same subject within the 12-month period, as set forth in subrule 9.3(7), provided that the department:

- (1) Informs the subject in advance of the fee; and
- (2) Provides the subject with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

e. Suspension of right. The department shall temporarily suspend a subject's right to receive an accounting of disclosures made to a health oversight agency or law enforcement official, as permitted in this chapter, if the agency or official provides the department with a statement that the accounting would likely impede the agency's activities and specifies the time for which a suspension is required.

(1) If the agency or official statement is submitted in writing, the department shall suspend the right to receive accounting for the time specified by the agency or official.

(2) If the agency or official statement is made orally, the department shall:

1. Document the statement, including the identity of the agency or official making the statement;
2. Temporarily suspend the subject's right to an accounting of disclosures subject to the statement;

and

3. Limit the temporary suspension to no longer than 30 days from the date of the oral statement, unless the agency or official statement is submitted in writing during that time.

9.14(6) Complaint procedure. A person who believes the department is not complying with the rules on protected health information or with the applicable requirements of 45 CFR Part 160 as amended to August 14, 2002, or with the applicable standards, requirements, and implementation specifications of 45 CFR of Subpart E of Part 164 as amended to August 14, 2002, may file a complaint with the department's privacy office or with the Secretary of Health and Human Services.

a. Complaints to the department's privacy office shall be in writing and may be delivered personally or by mail to the DHS Privacy Office, 1305 E. Walnut Street, First Floor, Des Moines, Iowa 50319-0114. Complaints regarding facilities may be sent to the applicable facility.

b. Complaints to the Secretary of Health and Human Services shall be made using the procedures set forth in 45 CFR 160.306 as amended to August 14, 2002.

9.14(7) Appeal rights.

a. If the subject disputes a decision by the privacy officer, the department's designated licensed health care professional, or the facility administrator on any of the following requests, the subject may appeal the decision in accordance with 441—Chapter 7.

- (1) A request for restriction on use or disclosure of protected health information.
- (2) A request for confidential communication of protected health information.
- (3) A request for access to protected health information.
- (4) A request to amend protected health information.
- (5) A request for accounting of disclosures.

b. The privacy officer or facility shall assist the subject in making the appeal, if needed.

c. Appeals shall be:

(1) Mailed to the Appeals Section, Fifth Floor, Iowa Department of Human Services, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; or

(2) Submitted electronically at dhs.iowa.gov/appeals.

9.14(8) Record retention. Notwithstanding any other department rule to the contrary, protected health information shall be retained for at least six years from the date of creation or the date when the information last was in effect, when required by 45 CFR 164.530, paragraph "j," as amended to August 14, 2002.

441—9.15(17A,22) Person who may exercise rights of the subject.

9.15(1) Adults. When the subject is an adult, including an emancipated minor, the subject's rights under this rule may also be exercised by the subject's legal or personal representative, except as provided in subrule 9.15(3).

9.15(2) Minors. Within the limits of subrule 9.15(3), when the subject is an unemancipated minor, the subject's rights under this rule shall be exercised only by the subject's legal representative, except as follows:

a. When the department otherwise deals with the minor as an adult, as in the case of minor parents under the family investment program.

b. When otherwise specifically provided by law. However, minor subjects shall be granted access to their own records upon request, subject to the limits in rule 441—9.9(17A,22).

9.15(3) Exceptions.

a. Scope of authority. Legal and personal representatives may act only within the scope of their authority. For protected health information, the designation must reflect the subject's ability to make health care decisions and receive protected health information. For example, court-appointed conservators shall have access to and authority to release only the following information:

- (1) Name and address of subject.
- (2) Amounts of assistance or type of services received.
- (3) Information about the economic circumstances of the subject.

b. Mental health information. Only an adult subject or a subject's legal representative may consent to the disclosure of mental health information. Records of involuntary hospitalization shall be released only as provided in Iowa Code section 229.24. Medical records of persons hospitalized under Iowa Code chapter 229 shall be released only as provided in Iowa Code section 229.25.

c. Substance abuse information. Only the subject may consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

d. Failure to act in good faith. If the department has reason to believe that the legal or personal representative is not acting in good faith in the best interests of the subject, the department may refuse to release information on the authorization of the legal or personal representative.

e. Abuse, neglect, and endangerment situations. Notwithstanding a state law or any other requirement of this chapter, the department, in the exercise of professional judgment, may elect not to treat a person as a subject's personal representative if:

- (1) The department has reason to believe that the subject has been or may be subjected to domestic violence, abuse, or neglect by the person; or
- (2) The department has reason to believe that treating the person as a personal representative could endanger the subject.

f. Protected health information. A parent, guardian, or other person acting in place of a parent who does not represent the minor for protected health information may still access protected health information about the minor if required by law.

g. Deceased subjects. If, under applicable law, an executor, administrator, or other person has authority to act on behalf of a deceased subject or of the subject's estate, the department shall treat that person as a personal representative.

h. Other. If, under applicable law, the subject of a confidential record is precluded from having a copy of a record concerning the subject disclosed to a third party, the department shall not treat the third party as a personal representative.

441—9.16(22) Personally identifiable information—human rights programs. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 441—9.1(17A,22). For each record system, this rule describes the legal authority for the collection or maintenance of that information; the means of storage of that information and indicates when applicable; if a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system; and when the record system is confidential, indicates the statutory authority. The record systems maintained within the agency are:

9.16(1) Personnel records.

a. The agency maintains files containing information about employees, families and dependents, and applicants for staff positions within the agency. These files include, but are not limited to, payroll

records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports and other information concerning employees and related issues. Some of this information is confidential under Iowa Code section 22.7(11).

b. The legal authority for maintaining the records for state-funded programs is Iowa Code section 8A.106 and chapter 216A. The legal authority for maintaining the records for federally funded programs is the Omnibus Budget Reconciliation Act, P.L. 97-35; Freedom of Information Act, 5 U.S.C. 552a; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and some parts are on a data processing system that matches, collates or permits the comparison of some personally identifiable information within the state's automated data processing system.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

9.16(2) Advocacy records.

a. The agency maintains files containing information pertaining to clients receiving advocacy or referral services to help alleviate or solve a problem. Such information may include, but is not limited to, names and addresses of clients, documents or other material relating to advocacy issues, social or economic conditions or circumstances of particular clients, department evaluations of information about clients, medical or psychiatric data provided to the department concerning a client, and legal data related to the client. These files may be indexed by advocacy files, client files, interpreting files or any direct service involving individual client assistance set forth in this rule or by statute.

b. The authority for maintaining these records is Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, P.L. 97-35; Juvenile Justice and Delinquency Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. Information is maintained on paper, electronically, and in other available mediums.

d. Information contained within this record system is confidential under the authority of Iowa Code sections 22.7(18) and 216A.6.

9.16(3) Fiscal records.

a. The agency maintains files containing fiscal information for state-funded programs and federally funded grants or contracts that may contain personally identifiable information.

b. The authority for maintaining these records is Iowa Code chapter 216A and federal statutes from which federal funds are granted.

c. These records are stored on paper and on the state's automated data processing system that matches, collates or permits the comparison of some personally identifiable information.

d. Certain information contained within this record system is confidential under the authority of Iowa Code section 22.7(11).

9.16(4) General correspondence, mailing lists, and program or grant data.

a. The agency maintains correspondence files, grant notices and applications, conference or committee listings and reports, board and commission meeting minutes, mailing lists, program and grant information including surveys or specialized reports and activities that contain some personally identifiable information that may include names, addresses or other descriptive data.

b. The authority for maintaining these records is Iowa Code chapter 216A; the Omnibus Budget Reconciliation Act, as amended, P.L. 97-35; Juvenile Justice and Prevention Act, P.L. 93-415; Victims Compensation and Assistance Act, P.L. 98-473; and other federal statutes from which federal funds are granted.

c. The information is maintained on paper and in computer systems.

d. These records are generally open to the public unless otherwise authorized to be confidential by law.

9.16(5) Criminal and juvenile justice information obtained from other agencies.

a. The agency maintains files containing criminal and juvenile justice information obtained from other agencies to conduct research and evaluations, to provide data and analytical information to federal, state and local governments, and to assist other agencies in the use of criminal and juvenile justice data. These files may contain personally identifiable information.

b. The agency maintains these records pursuant to the authority of Iowa Code sections 216A.136 and 216A.138 and by interagency agreements.

c. The information is maintained on paper, some of which is also in computer files, or in computer files and not on paper, or on a data processing system. Some of these files and systems are capable of matching, collating or permitting the comparison of some personally identifiable information.

d. Certain criminal and juvenile justice information contained within these records and record systems is confidential under state or federal law or rule.

[ARC 6101C, IAB 12/29/21, effective 2/2/22; Editorial change: IAC Supplement 6/14/23]

441—9.17(22) Personally identifiable information—child advocacy board. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems. For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

1. Files are maintained by the child's name in the child advocacy board offices. Those files are kept in locked filing cabinets. (Iowa Code section 237.18(2) "a")

2. The foster care registry (Iowa Code section 237.17) is a computerized tracking system of the children reported to the child advocacy board. The information of each case is personally identifiable by name.

3. Personnel files for each employee of the child advocacy board. These may be confidential pursuant to Iowa Code section 22.7(11).

[ARC 1375C, IAB 3/19/14, effective 4/23/14; ARC 6676C, IAB 11/16/22, effective 12/21/22; Editorial change: IAC Supplement 6/14/23]

441—9.18(17A,22) Personally identifiable information—aging programs. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 441—9.1(17A,22). For each record system, this rule describes the legal authority for collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Some of the record systems described in the accompanying chart as "open" may contain confidential information under 17—subrule 19.13(2). The record systems maintained by the agency are:

Abbreviations are used in the chart as follows:

Code	Meaning
O/C	The record is partly open and partly confidential.
O	The records are open for public inspection.
C	The records are confidential and are not open to the public.
PI	Personally identifiable information.
NA	Not Applicable.

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Record of Commission and Statutory Committees	O/C	Iowa Code 21.5(4)	No	NA
Rule Making	O	NA	No	NA
Declaratory Rulings	O	NA	No	NA
Rules and Policy Manuals	O	NA	No	NA
State Plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical Reports	O	NA	No	NA
Financial and Administrative Records	O	NA	No	NA
Contracts and Interagency Agreements	O	NA	No	NA
Grant Records				
• Title III	O	NA	No	NA
• Title V	O	NA	No	NA
• Discretionary	O	NA	No	NA
• USDA	O	NA	No	NA
• Title IV	O	NA	No	NA
Program Records				
• Notice of Grant Awards	O	NA	No	NA
• Senior Community Service Employment	O/C	20 CFR 674.203b-3	Yes	20 CFR 674.203b-3
			name address age race eligibility info. area medical info. phone no.	
• Elder Abuse	O	NA	No	NA
• Retired Iowan	O	NA	No	NA
Employment				
• Elderlaw	O	NA	No	NA
• Retired Senior Volunteer	O	NA	No	NA
• Elderly Services	O	NA	No	NA
• Insurance Information	O	NA	No	NA
• Alzheimer's Disease	O	NA	No	NA
• JTPA	O	NA	No	NA
• Long-Term Care	O	NA	No	NA
Coordinating Unit				
• Housing	O	NA	Yes	Iowa Code 231.23
• Advocacy				
			name address	
• Training Information	O	NA	Yes	Iowa Code 231.23
			name address	
Care Review Committees	O	NA	Yes	Iowa Code 231.44

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Older Iowan Legislature	O	NA	name address county PSA phone no. training info.	Iowa Code 231.23
State Advisory Council	O	NA	name address PSA district phone no.	Iowa Code 231.23
Ombudsman Complaints	C	Iowa Code 135C.37, 231.42	Yes name address phone no. PSA	Iowa Code 135C.37 231.42
Newsletter Mailing Lists, Conference Lists, Interested Individuals and Group Lists, Resource Lists	O	NA	name address county facility level of care lic. administrator patient pay status complainant complaint description cat. receiver of complaint investigator method & date verification scope of facility complaint	Iowa Code 231.23
			name address telephone no.	

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Centenarians Registry	O	NA	Yes name address area county facility phone no. birth date death date sex	Iowa Code 231.23

9.18(1) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney’s notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

9.18(2) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).
 [ARC 8489B, IAB 1/27/10, effective 1/7/10; Editorial change: IAC Supplement 6/28/23]

441—9.19(17A,22) Availability of records—volunteer service commission. This rule lists the agency records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Agency records are listed by category, according to the legal basis for confidential treatment (if any). The commission administers federally funded programs to enforce confidentiality standards for federal law and regulations as are required for receipt of the funds. A single record may contain information from several categories.

The chart indicates whether the record contains personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations used in the chart are defined as follows:

<u>Code</u>	<u>Meaning</u>	<u>Code</u>	<u>Meaning</u>
O	Open for public inspection	O/C	Partially open and partially confidential
C	Confidential/Not open to the public	O/E	Partially open to members of the public and partially exempt from disclosure
E	Exempt from mandatory disclosure		
NA	Not Applicable		

Description of Record	Type of Record	Legal Authority For Confidentiality	Personally Identifiable Information
Records of Commission and Committees	O/E	Iowa Code 21.5	No
Rule Making	O	NA	No
Declaratory Rulings	O/C	Iowa Code 22.7	No
Policy Manuals	O	NA	No
General Correspondence	O/E/C	Iowa Code 22.7	Yes
Publications	O	NA	No
Financial and Administrative Records	O/E/C	Iowa Code 22.7	Yes
Contracts and Agreements	O/C	Iowa Code 22.7(3)	Yes
Appeal Records	O/C	Iowa Code 22.7	Yes
Litigation Files	O/E/C	Iowa Code 22.7	Yes
Privileged Communications and Products of Attorneys	E/C	Iowa Code 22.7	No

[Editorial change: IAC Supplement 6/14/23]

441—9.20(17A,22) Personally identifiable information—public health programs. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifiers in record systems as defined in rule 441—9.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information. A data processing system does not match, collate, or permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system unless so indicated. The record systems maintained by the department are as follows:

9.20(1) Public health program records.

a. Records of reportable diseases and other diseases and health conditions collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

b. Records of reportable sexually transmitted diseases or infections collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*b.*”

c. Records of the veterinary public health program collected pursuant to Iowa Code chapter 139A. These records are stored on paper. Certain medical information in these records may be confidential as outlined in 641—paragraph 175.13(2)“*a.*”

d. Records of the emergency medical services program collected pursuant to Iowa Code chapter 147A. These records are stored on paper, electronically, or both, depending on the specific type of record. Some of these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

e. Records of the AIDS drug reimbursement program collected for purposes of implementing a federal grant program authorized by HR 1827. These records are stored on paper. Certain patient records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”

f. Personnel records containing information about employees, families and dependents, and applicants for positions with the department. Some of this information is confidential under Iowa Code sections 22.7(11) and 22.7(18).

- g.* Records of the certificate of need program collected pursuant to Iowa Code sections 135.61 to 135.83. These records are stored on paper.
- h.* Annual hospital surveys collected pursuant to Iowa Code sections 135.74 and 135.75. These records are stored on paper and electronically.
- i.* Vital records collected pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence. These records are stored on paper, on microfiche, and electronically. These records are confidential as noted in 641—paragraph 175.13(2)“*b.*”
- j.* Licensing records of the professional licensing boards. These records are identified in rules filed by the individual licensing boards (see Professional Licensure Division, IAC 645). They contain information about individuals, some of which is confidential.
- k.* An electronic inventory of records maintained by the department, which indicates the type of information contained in the record, contact person for the record, how the record is stored, whether the record is confidential, and whether it contains personally identifiable information. This inventory is maintained by the information management bureau.
- l.* Fiscal records, including itemized vouchers collected from individuals pursuant to Iowa Code section 8A.514. These records are stored on paper and electronically.
- m.* Records of substance abuse programs of this division are identified in rules adopted by the board of health in 641—Chapter 155.
- n.* Records of the domestic abuse death review team collected pursuant to Iowa Code section 135.110. These records are stored on paper, electronically, or both. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*c.*”
- o.* Records which identify a person named in a report to the central registry for brain or spinal cord injuries collected pursuant to Iowa Code section 135.22. These records are stored on paper, electronically, or both. Except for statistical reports, these records are maintained as confidential pursuant to Iowa Code section 135.22 and rule 641—21.6(135).
- p.* Records which identify brain injury service program recipients collected pursuant to Iowa Code section 135.22B. These records are stored on paper, electronically, or both.
- q.* Records of the environmental health programs collected pursuant to Iowa Code section 135.11(1) and PL 96-510, Section 104(d)(1), 40 CFR 763 effective June 28, 1983, and 40 CFR 761 effective May 31, 1979, dealing with asbestos, PCB and other environmental health factors. These records are stored on paper, electronically, or both, depending on the specific type of record. Certain medical information in the work-related disease program file may be confidential as outlined in 641—paragraph 175.13(2)“*d.*” Certain asbestos and PCB inspection records are collected under contract with the federal Environmental Protection Agency, and requests for such records will be referred to that agency.
- r.* Records of the radiological health program collected pursuant to Iowa Code chapters 136B and 136C. These records are stored on paper, electronically, or both, depending on the specific record. Certain of these records are confidential as outlined in 641—paragraph 175.13(2)“*d.*”
- s.* Records of reportable diseases and other diseases and health conditions, including lead and other heavy metal poisonings, collected pursuant to Iowa Code chapter 139A. These records are stored on paper, electronically, or both, depending on the specific type of record. Except for statistical reports, these records are confidential as outlined in 641—paragraph 175.13(2)“*a.*”
- t.* Records of the childhood lead poisoning prevention program collected pursuant to Iowa Code sections 135.100 to 135.105. These records are stored on paper, electronically, or both. Certain of these records are confidential as outlined in 641—paragraph 175.13(2)“*d.*” Data processing systems will link certain client data in these programs with client data in the maternal and child health program, WIC program, and refugee health program.
- u.* Records of the maternal and child health programs collected pursuant to Iowa Code section 135.11(20). These records are stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in these programs with client data in the WIC program.

v. Records of the nutrition and WIC (supplemental food program for women, infants and children) programs collected pursuant to Iowa Code section 135.11(1) and Chapter 17 of the federal Child Nutrition Act of 1966 as amended. These records are stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in this program with client data in maternal and child health programs.

w. Records of the center for congenital and inherited disorders collected pursuant to Iowa Code chapter 136A. These records are stored on paper.

x. Records of the dental health programs collected pursuant to Iowa Code section 135.11(19), funded primarily by maternal and child health funds. These records are stored on paper or electronically, depending on the specific type of record.

y. Records of the newborn and infant hearing screening program collected pursuant to Iowa Code section 135.131. These records are stored on paper, electronically, or both, depending on the specific type of record. Information which identifies an individual patient is confidential as outlined in 641—paragraph 175.13(2) “e.”

z. Refugee health program records collected pursuant to Iowa Code section 135.11(1) and Section 412(c)(3) of the federal Immigration and Naturalization Act. These records are stored on paper, electronically, or both, depending on the specific type of record. Certain medical information in these records is confidential as outlined in 641—paragraph 175.13(2) “f.”

aa. Records of the bureau of chronic disease prevention and management collected pursuant to Iowa Code section 135.11(1), including the Well-Integrated Screening and Evaluation for Women Across the Nation (WISEWOMAN) program and the Breast and Cervical Cancer Early Detection Program (BCCEDP). Certain medical information in these records is confidential as outlined in 641—paragraph 175.13(2) “f.” The medical information from wellness programs and screening programs is stored on paper, electronically, or both, depending on the specific type of record. Data processing systems will link certain client data in these programs with client data in the University of Iowa’s health registries.

9.20(2) Reserved.

[Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code sections 17A.3, 22.11, 217.6 and 217.30, Iowa Code chapters 228 and 252G, and the Health Insurance Portability and Accountability Act of 1996.

[Filed emergency 11/25/75—published 12/15/75, effective 11/25/75]

[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 2/16/77]

[Filed 9/6/79, Notice 7/11/79—published 10/3/79, effective 11/7/79]

[Filed 4/23/81, Notice 3/4/81—published 5/13/81, effective 6/17/81]

[Filed emergency 2/10/84—published 2/29/84, effective 2/10/84]

[Filed 3/4/85, Notice 12/19/84—published 3/27/85, effective 5/1/85]

[Filed 7/25/86, Notice 5/21/86—published 8/13/86, effective 10/1/86]

[Filed 11/14/86, Notice 10/8/86—published 12/3/86, effective 2/1/87]

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

[Filed 4/22/88, Notice 2/10/88—published 5/18/88, effective 7/1/88]

[Filed without Notice 12/8/88—published 12/28/88, effective 2/1/89]

[Filed emergency 6/29/89 after Notice 5/3/89—published 7/26/89, effective 7/1/89]

[Filed 10/10/89, Notice 8/23/89—published 11/1/89, effective 1/1/90]

[Filed 12/15/89, Notice 7/26/89—published 1/10/90, effective 3/1/90]

[Filed emergency 10/12/90 after Notice 8/22/90—published 10/31/90, effective 11/1/90]

[Filed 10/12/90, Notice 8/22/90—published 10/31/90, effective 1/1/91]

[Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]

[Filed emergency 6/14/91 after Notice 5/1/91—published 7/10/91, effective 7/1/91]

[Filed 8/12/93, Notice 6/23/93—published 9/1/93, effective 11/1/93]

[Filed 1/11/95, Notice 11/23/94—published 2/1/95, effective 4/1/95]

[Filed emergency 6/12/97—published 7/2/97, effective 7/1/97]

[Filed 9/16/97, Notice 7/2/97—published 10/8/97, effective 12/1/97]

[Filed 11/12/97, Notice 9/10/97—published 12/3/97, effective 2/1/98]

[Filed 8/12/98, Notice 6/17/98—published 9/9/98, effective 11/1/98]
[Filed 9/12/00, Notice 7/12/00—published 10/4/00, effective 12/1/00]
[Filed emergency 10/10/03—published 10/29/03, effective 11/1/03]
[Filed emergency 6/14/04—published 7/7/04, effective 7/1/04]
[Filed 9/23/04, Notice 7/7/04—published 10/13/04, effective 11/17/04]
[Filed 9/23/04, Notice 8/4/04—published 10/13/04, effective 11/17/04]
[Filed without Notice 5/4/05—published 5/25/05, effective 7/1/05]
[Filed 8/12/05, Notice 6/8/05—published 8/31/05, effective 11/1/05]
[Filed emergency 1/19/07—published 2/14/07, effective 1/20/07]
[Filed ARC 0420C (Notice ARC 0255C, IAB 8/8/12), IAB 10/31/12, effective 1/1/13]
[Filed ARC 1262C (Notice ARC 1045C, IAB 10/2/13), IAB 1/8/14, effective 3/1/14]
[Filed ARC 5305C (Notice ARC 5167C, IAB 9/9/20), IAB 12/2/20, effective 2/1/21]
[Filed ARC 5417C (Notice ARC 5274C, IAB 11/18/20), IAB 2/10/21, effective 4/1/21]
[Editorial change: IAC Supplement 6/14/23]
[Editorial change: IAC Supplement 6/28/23]

CHAPTER 58

EMERGENCY ASSISTANCE

Transferred to 605—Chapter 11, IAC Supplement 6/28/23

CHAPTER 59

UNEMPLOYED PARENT WORKFARE PROGRAM

[Prior to 7/1/83, Social Services[770] Ch 59]

Rescinded, effective 7/1/89; see 441—Chapter 93

CHAPTER 58
NURSING FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 58]

481—58.1(135C) Definitions. For the purpose of these rules, the following terms shall have the meaning indicated in this chapter. The definitions set out in Iowa Code section 135C.1 shall be considered to be incorporated verbatim in the rules. The use of the words “shall” and “must” indicates those standards are mandatory. The use of the words “should” and “could” indicates those standards are recommended.

“*Accommodation*” means the provision of lodging, including sleeping, dining, and living areas.

“*Administrator*” means a person licensed pursuant to Iowa Code chapter 147 who administers, manages, supervises, and is in general administrative charge of a nursing facility, whether or not such individual has an ownership interest in such facility, and whether or not the functions and duties are shared with one or more individuals.

“*Ambulatory*” means the condition of a person who immediately and without aid of another is physically or mentally capable of traveling a normal path to safety, including the ascent and descent of stairs if applicable to the facility.

“*Basement*” means that part of a building where the finish floor is more than 30 inches below the finish grade.

“*Board*” means the regular provision of meals.

“*Communicable disease*” means a disease caused by the presence of viruses or microbial agents within a person’s body, which agents may be transmitted either directly or indirectly to other persons.

“*Department*” means the state department of inspections and appeals.

“*Distinct part*” means a clearly identifiable area or section within a health care facility, consisting of at least a residential unit, wing, floor, or building containing contiguous rooms.

“*Medication*” means any drug including over-the-counter substances ordered and administered under the direction of the physician.

“*Nonambulatory*” means the condition of a person who immediately and without aid of another is not physically or mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

“*Nourishing snack*” is defined as a verbal offering of items, single or in combination, from the basic food groups. Adequacy of the “nourishing snack” will be determined both by resident interviews and by evaluation of the overall nutritional status of residents in the facility.

“*Person directed care environment*” means the provision of care and services provided in a facility that promotes decision making and choices by the resident, enhances the primary caregiver’s capacity to respond to each resident’s needs, and promotes a homelike environment. Examples of a person directed care environment include, but are not limited to, the Green House concept, the Eden alternative, service houses and neighborhoods.

“*Personal care*” means assistance with the activities of daily living which the recipient can perform only with difficulty. Examples are assistance in getting in and out of bed, assistance with personal hygiene and bathing, assistance with dressing, meal assistance, and supervision over medications which can be self-administered.

“*Potentially hazardous food*” means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms, the growth and toxin production of clostridium botulinum, or in raw shell eggs, the growth of salmonella enteritidis. Potentially hazardous food includes an animal food (a food of animal origin) that is raw or heat-treated; a food of plant origin that is heat-treated or consists of raw seed sprouts; cut melons; and garlic and oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth of bacteria.

“*Primary care provider*” means any of the following who provide primary care and meet certification standards:

1. A physician who is a family or general practitioner or an internist.
2. An advanced registered nurse practitioner.

3. A physician assistant.

“*Program of care*” means all services being provided for a resident in a health care facility.

“*Qualified intellectual disabilities professional*” means a psychologist, physician, physician assistant, registered nurse, educator, social worker, physical or occupational therapist, speech therapist or audiologist who meets the educational requirements for the profession, as required in the state of Iowa, and having one year’s experience working with persons with an intellectual disability.

“*Qualified nurse*” means a registered nurse or a licensed practical nurse, as defined in Iowa Code chapter 152.

“*Rate*” means that daily fee charged for all residents equally and shall include the cost of all minimum services required in these rules and regulations.

“*Responsible party*” means the person who signs or cosigns the admission agreement required in 481—58.13(135C) or the resident’s guardian or conservator if one has been appointed. In the event that a resident does not have a guardian, conservator or other person signing the admission agreement, the term “responsible party” shall include the resident’s sponsoring agency, e.g., the department of human services, the U.S. Department of Veterans Affairs, religious groups, fraternal organizations, or foundations that assume responsibility and advocate for their client patients and pay for their health care.

“*Restraints*” means any chemical, manual method or physical or mechanical device, material, or equipment attached to the resident’s body that the individual cannot remove easily which restricts freedom of movement or normal access to one’s body.

“*Substantial evening meal*” is defined as an offering of three or more menu items at one time, one of which includes a high protein such as meat, fish, eggs or cheese. The meal would represent no less than 20 percent of the day’s total nutritional requirements.

[ARC 0766C, IAB 5/29/13, effective 7/3/13; ARC 1398C, IAB 4/2/14, effective 5/7/14; ARC 1752C, IAB 12/10/14, effective 1/14/15; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.2(135C) Waivers. Waivers from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for a waiver has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the waiver will apply only to an individual nursing facility. Waivers will be reviewed at the discretion of the director of the department of inspections and appeals.

58.2(1) To request a waiver, the licensee must:

- a. Apply for a waiver in writing on a form provided by the department;
- b. Cite the rule or rules from which a waiver is desired;
- c. State why compliance with the rule or rules cannot be accomplished;
- d. Explain alternate arrangements or compensating circumstances which justify the waiver;
- e. Demonstrate that the requested waiver will not endanger the health, safety, or welfare of any resident.

58.2(2) Upon receipt of a request for a waiver, the director of inspections and appeals will:

- a. Examine the rule from which a waiver is requested to determine that the request is necessary and reasonable;
- b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;
- c. Examine the effect of the requested waiver on the health, safety, or welfare of the residents;
- d. Consult with the applicant if additional information is required.

58.2(3) Based upon these studies, approval of the waiver will be either granted or denied within 120 days of receipt.

[ARC 5719C, IAB 6/16/21, effective 7/21/21]

481—58.3(135C) Application for licensure.

58.3(1) Initial application and licensing. In order to obtain an initial nursing facility license, for a nursing facility which is currently licensed, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Applicable exceptions found in rule 481—61.2(135C) shall apply based on the construction date of the facility.

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 60 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the nursing facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

e. Submit a photograph of the front and side elevation of the nursing facility;

f. Submit the statutory fee for a nursing facility license;

g. Meet the requirements of a nursing facility for which licensure application is made;

h. Comply with all other local statutes and ordinances in existence at the time of licensure;

i. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

58.3(2) In order to obtain an initial nursing facility license for a facility not currently licensed as a nursing facility, the applicant must:

a. Meet all of the rules, regulations, and standards contained in 481—Chapters 58 and 61. Exceptions noted in 481—subrule 61.1(2) shall not apply;

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 60 days prior to the change of ownership of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the nursing facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the nursing facility;

f. Submit the statutory fee for a nursing facility license;

g. Comply with all other local statutes and ordinances in existence at the time of licensure;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

58.3(3) *Renewal application.* In order to obtain a renewal of the nursing facility license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of nursing facility license;

b. Submit the statutory license fee for a nursing facility with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program or other services.

58.3(4) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.4(135C) General requirements.

58.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

58.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

58.4(3) The posted license shall accurately reflect the current status of the nursing facility. (III)

58.4(4) Licenses expire one year after the date of issuance or as indicated on the license.

58.4(5) A nursing facility shall not be licensed for more beds than have been approved by the health facilities council pursuant to Iowa Code chapter 135 or than the facility can accommodate pursuant to the minimum physical standards for nursing facilities as set forth in 481—Chapter 61.

58.4(6) The facility shall post in a place readily accessible to residents, visitors, and persons inquiring about placement in the facility the results of the most recent survey of the facility. The facility shall maintain any surveys, certifications, and complaint investigations made respecting the facility during the three preceding years, and any plan of correction in effect with respect to the facility, available for any individual to review upon request. (III)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.5(135C) Notifications required by the department. The department shall be notified:

58.5(1) Within 48 hours of any reduction or loss of nursing or dietary staff lasting more than seven days which places the staffing requirements below those required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

58.5(2) Thirty days before any proposed change in the nursing facility's functional operation or addition or deletion of required services; (III)

58.5(3) Thirty days before addition, alteration, or new construction is begun in the nursing facility or on the premises; (III)

58.5(4) Thirty days in advance of closure of the nursing facility; (III)

58.5(5) Within two weeks of any change in administrator; (III)

58.5(6) When any change in the category of license is sought; (III)

58.5(7) Prior to the purchase, transfer, assignment, or lease of a nursing facility, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 60 days before the sale, transfer, assignment, or lease is completed. (III)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.6(135C) Witness fees. Rescinded IAB 3/30/94, effective 5/4/94. See 481—subrule 50.6(4).

481—58.7(135C) Licenses for distinct parts.

58.7(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

58.7(2) The following requirements shall be met for a separate licensing of a distinct part:

a. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

b. The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

c. A distinct part must be operationally and financially feasible;

d. A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

e. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

481—58.8(135C) Administrator.

58.8(1) Each nursing facility shall have one person in charge, duly licensed as a nursing home administrator or acting in a provisional capacity. (III)

58.8(2) A licensed administrator may act as an administrator for not more than two nursing facilities.

a. The distance between the two facilities shall be no greater than 75 miles. (II)

b. The administrator shall spend the equivalent of three full eight-hour days per week in each facility. (II)

c. The administrator may be responsible for no more than 150 beds in total if the administrator is an administrator of more than one facility. (II)

58.8(3) The licensee may be the licensed nursing home administrator providing the licensee meets the requirements as set forth in these regulations and devotes the required time to administrative duties. Residency in the facility does not in itself meet the requirement. (III)

58.8(4) A provisional administrator may be appointed on a temporary basis by the nursing facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator.

a. No facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 12 consecutive months.

b. The facility shall notify the department in writing within 14 days of the administrator's appointment. The written notice shall include the estimated time frame for the appointment of the provisional administrator and the reason for the appointment of a provisional administrator. (III)

c. The provisional administrator's appointment must be approved by the board of examiners for nursing home administrators. The approval shall be confirmed in writing to the department. (III)

58.8(5) In the absence of the administrator, a responsible person shall be designated in writing to the department to be in charge of the facility. The administrator shall not be absent from the facility for more than 3 months without approval of the department. (III)

The person designated shall:

a. Be knowledgeable of the operation of the facility; (III)

b. Have access to records concerned with the operation of the facility; (III)

c. Be capable of carrying out administrative duties and of assuming administrative responsibilities; (III)

d. Be at least 21 years of age; (III)

e. Be empowered to act on behalf of the licensee during the administrator's absence concerning the health, safety, and welfare of the residents; (III)

f. Have had training to carry out assignments and take care of emergencies and sudden illness of residents. (III)

58.8(6) A licensed administrator in charge of two facilities shall employ an individual designated as a full-time assistant administrator for each facility. (III)

58.8(7) An administrator of only one facility shall be considered as a full-time employee. Full-time employment is defined as 40 hours per week. (III)

[ARC 1398C, IAB 4/2/14, effective 5/7/14; ARC 2020C, IAB 6/10/15, effective 7/15/15; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.9(135C) Administration.

58.9(1) The licensee shall:

a. Assume the responsibility for the overall operation of the nursing facility; (III)

b. Be responsible for compliance with all applicable laws and with the rules of the department; (III)

c. Establish written policies, which shall be available for review, for the operation of the nursing facility. (III)

58.9(2) The administrator shall:

a. Be responsible for the selection and direction of competent personnel to provide services for the resident care program; (III)

b. Be responsible for the arrangement for all department heads to annually attend a minimum of ten contact hours of educational programs to increase skills and knowledge needed for the position; (III)

c. Be responsible for a monthly in-service educational program for all employees and to maintain records of programs and participants; (III)

d. Make available the nursing facility payroll records for departmental review as needed; (III)

e. Be required to maintain a staffing pattern of all departments. These records must be maintained for six months and are to be made available for departmental review. (III)

481—58.10(135C) General policies.

58.10(1) There shall be written personnel policies in facilities of more than 15 beds to include hours of work, and attendance at educational programs. (III)

58.10(2) There shall be a written job description developed for each category of worker. The job description shall include title of job, job summary, qualifications (formal education and experience), skills needed, physical requirements, and responsibilities. (III)

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

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

58.10(4) Health certificates for all employees shall be available for review. (III)

58.10(5) Rescinded IAB 10/19/88, effective 11/23/88.

58.10(6) There shall be written policies for emergency medical care for employees and residents in case of sudden illness or accident which includes the individual to be contacted in case of emergency. (III)

58.10(7) The facility shall have a written agreement with a hospital for the timely admission of a resident who, in the opinion of the attending physician, requires hospitalization. (III)

58.10(8) Infection control program. Each facility shall have a written and implemented infection control and exposure control program with policies and procedures based on the guidelines issued by the Centers for Disease Control and Prevention (CDC), U.S. Department of Health and Human Services. (I, II, III) CDC guidelines are available at www.cdc.gov.

58.10(9) Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. The infection control committee may be part of or the same as another quality assurance committee as long as the following standards are met: (III)

- a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)
- b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)
- c. The committee shall monitor the health aspect and the environment of the facility. (III)

58.10(10) There shall be written policies for resident care programs and services as outlined in these rules. (III)

58.10(11) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

[ARC 0663C, IAB 4/3/13, effective 5/8/13; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.11(135C) Personnel.

58.11(1) General qualifications.

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a nursing facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a nursing facility. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease:

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

Refer to guidelines issued by the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, to determine (1), (2), (3) and (4).

d. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

e. Persons employed in all departments, except the nursing department of a nursing facility, shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least 240 hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within 30 days after the initial hiring of such untrained employees. (III)

f. The health services supervisor shall be a qualified nurse as defined in these regulations. (II)

g. There shall be an organized ongoing in-service educational and training program planned in advance for all personnel in all departments. (II, III)

h. Nurse aides may be utilized in accordance with the requirements in 441—subrule 81.13(19) and rule 441—81.16(249A). Nurse aides who have received training other than the Iowa state-approved program must pass a competency evaluation approved by the department of inspections and appeals in accordance with 441—subrule 81.13(19) and rule 441—81.16(249A). Evidence of prior formal training must be presented to the facility or institution conducting the challenge examination before the examination is given. The approved facility or institution, following department of inspections and appeals guidelines, shall make the determination of who is qualified to take the examination. Documentation of the challenge examinations administered shall be maintained.

58.11(2) *Nursing supervision and staffing.*

a. Where only part-time nurses are employed, one nurse shall be designated health service supervisor. (III)

b. A qualified nurse shall be employed to relieve the supervising nurses, including charge nurses, on holidays, vacation, sick leave, days off, absences or emergencies. Pertinent information for contacting such relief person shall be readily available to nurses. (III)

c. When the health service supervisor serves as the administrator of a facility 50 beds and over, a qualified nurse must be employed to relieve the health service supervisor of nursing responsibilities. (III)

d. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

e. A nursing facility of 75 beds or more shall have a qualified nurse on duty 24 hours per day, seven days a week. (II, III)

f. In facilities under 75 beds, if the health service supervisor is a licensed practical nurse, the facility shall employ a registered nurse, for at least four hours each week for consultation, who must be on duty at the same time as the health service supervisor. (II, III)

(1) This shall be an on-site consultation and documentation shall be made of the visit. (III)

(2) The registered nurse-consultant shall have responsibilities clearly outlined in a written agreement with the facility. (III)

(3) Consultation shall include but not be limited to the following: counseling the health service supervisor in the management of the health services; (III) reviewing and evaluating the health services in determining that the needs of the residents are met; (II, III) conducting a review of medications at least monthly if the facility does not employ a registered nurse part-time. (II, III)

g. Facilities with 75 or more beds must employ a health service supervisor who is a registered nurse. (II)

h. There shall be at least two people who shall be capable of rendering nursing service, awake, dressed, and on duty at all times. (II)

i. Physician's and other qualified health care practitioner's orders shall be implemented by qualified personnel. (II, III)

58.11(3) *Employee criminal record checks, child abuse checks and dependent adult abuse checks and employment of individuals who have committed a crime or have a founded abuse.* The facility shall comply with the requirements found in Iowa Code section 135C.33 and rule 481—50.9(135C) related to completion of criminal record checks, child abuse checks, and dependent adult abuse checks and to employment of individuals who have committed a crime or have a founded abuse. (I, II, III)
[ARC 0903C, IAB 8/7/13, effective 9/11/13; ARC 5421C, IAB 2/10/21, effective 3/17/21; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.12(135C) Admission, transfer, and discharge.

58.12(1) *General admission policies.*

a. No resident shall be admitted or retained in a nursing facility who is in need of greater services than the facility can provide. (II, III)

b. No nursing facility shall admit more residents than the number of beds for which it is licensed, except guest rooms for visitors. (II, III)

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a nursing facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

f. The admission of a resident shall not grant the nursing facility the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and safe and orderly management of the facility as required by these rules. (III)

g. Residents have a right to retain and use personal possessions, including furnishings and clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the nursing facility belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee, or conservator for any resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

l. Within 30 days of a resident's admission to a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A, the facility shall ask the resident or the resident's personal representative whether the resident is a veteran and shall document the response. If the facility determines that the resident is a potential veteran, the facility shall report the resident's name along with the names of the resident's spouse and any dependent children, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services.

If a resident is eligible for benefits through the United States Department of Veterans Affairs or other third-party payor, the facility first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care or to the admission of an individual to the Iowa Veterans Home. (II, III)

58.12(2) *Discharge or transfer.*

a. Prior notification shall be made to the resident, as well as the resident's next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

b. Proper arrangements shall be made by the nursing facility for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

c. The licensee shall not refuse to discharge or transfer a resident when the physician, family, resident, or legal representative requests such a discharge or transfer. (II, III)

d. Advance notification will be made to the receiving facility prior to the transfer of any resident. (III)

e. When a resident is transferred or discharged, the appropriate record as set forth in 58.15(2) "k" of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III) [ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.13(135C) Contracts. Each contract shall:

58.13(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

58.13(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in 58.13(3); (III)

b. State the method of payment of additional charges; (III)

c. Contain an explanation of the method of assessment of such additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

d. State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

58.13(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

58.13(4) Include the total fee to be charged initially to the specific resident; (III)

58.13(5) State the conditions whereby the facility may make adjustments to the facility's overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

a. Written notification to the resident, or responsible party when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to effective date of such changes; (III)

b. Notification to the resident, or responsible party when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date such revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

58.13(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

58.13(7) State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

a. The facility shall ask the resident or responsible party if the resident wants the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

58.13(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

58.13(9) State the conditions of voluntary discharge or transfer; (III)

58.13(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

58.13(11) Each party shall receive a copy of the signed contract. (III)

481—58.14(135C) Medical services.

58.14(1) Each resident in a nursing facility shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

58.14(2) Each resident admitted to a nursing facility shall have had a physical examination prior to admission. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may be made part of the record in lieu of an additional physical examination. A record of the examination, signed by the physician or other qualifying health care practitioner, shall be a part of the resident's record. (III)

58.14(3) Arrangements shall be made to have a physician available to furnish medical care in case of emergency. (II, III)

58.14(4) Rescinded, effective 7/14/82.

58.14(5) The person in charge shall immediately notify the physician of any accident, injury, or adverse change in the resident's condition. (I, II, III)

58.14(6) A schedule listing the names and telephone numbers of the physicians shall be readily available to nursing staff. (III)

58.14(7) Residents shall be admitted to a nursing facility only on a written order signed by a physician certifying that the individual being admitted requires no greater degree of nursing care than the facility is licensed to provide. (III)

58.14(8) Physician delegation of tasks. Each resident, including private pay residents, shall be visited by or shall visit the resident's physician at least twice a year. The year period shall be measured from the date of admission and is not to include preadmission physicals.

a. For a skilled nursing patient, the resident must be seen by a physician for the initial comprehensive visit. Additional visits are required at least once every 30 days for 90 days after admission and at least once every 60 days thereafter. After the initial comprehensive visit, alternate required visits may be performed by an advanced registered nurse practitioner, clinical nurse specialist or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

b. Notwithstanding the provisions of 42 CFR 483.40, any required physician task or visit in a nursing facility may also be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant who is working in collaboration with a physician, as outlined in Table 1. (III)

c. In dually certified skilled nursing/nursing facilities, the advanced registered nurse practitioner, clinical nurse specialist, and physician assistant must follow the skilled nursing facility requirements for

services for skilled nursing facility stays. For nursing facility stays in skilled nursing/nursing facilities, any required physician task or visit may be performed by an advanced registered nurse practitioner, clinical nurse specialist, or physician assistant working in collaboration with the physician. (III)

d. Nurse practitioners, clinical nurse specialists, and physician assistants may perform other tasks that are not reserved to the physician such as visits outside the normal schedule needed to address new symptoms or other changes in medical status. (III)

Table 1: Authority for non-physician practitioners to perform visits, sign orders, and sign certifications/recertifications when permitted by state law*

	Initial Comprehensive Visit/Orders	Other Required Visits ¹	Other Medically Necessary Visits and Orders ²	Certification/Recertification
Skilled Nursing Facilities				
Physician assistant, nurse practitioner and clinical nurse specialist employed by the facility	May not perform/May not sign	May perform alternate visits	May perform and sign	May not sign
Physician assistant, nurse practitioner and clinical nurse specialist not a facility employee	May not perform/May not sign	May perform alternate visits	May perform and sign	May sign subject to state requirements

	Initial Comprehensive Visit/Orders	Other Required Visits ¹	Other Medically Necessary Visits and Orders ²	Certification/Recertification
Nursing Facilities				
Nurse practitioner, clinical nurse specialist, and physician assistant employed by the facility	May not perform/May not sign	May not perform	May perform and sign	Not applicable ⁺
Nurse practitioner, clinical nurse specialist, and physician assistant not a facility employee	May perform/May sign	May perform	May perform and sign	Not applicable ⁺

*As permitted by state law governing the scope and practice of nurse practitioners, clinical nurse specialists, and physician assistants.

¹ Other required visits include the skilled nursing resident monthly visits that may be alternated between physician and advanced registered nurse practitioners, clinical nurse specialists, or physician assistants after the initial comprehensive visit is completed.

² Medically necessary visits may be performed prior to the initial comprehensive visit.

⁺ This requirement relates specifically to coverage of Part A Medicare stays, which can take place only in a Medicare-certified skilled nursing facility.

[ARC 1048C, IAB 10/2/13, effective 11/6/13; ARC 1398C, IAB 4/2/14, effective 5/7/14; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.15(135C) Records.

58.15(1) Resident admission record. The licensee shall keep a permanent record on all residents admitted to a nursing facility with all entries current, dated, and signed. This shall be a part of the resident clinical record. (III) The admission record form shall include:

- a. Name and previous address of resident; (III)
- b. Birth date, sex, and marital status of resident; (III)
- c. Church affiliation; (III)
- d. Physician's name, telephone number, and address; (III)
- e. Dentist's name, telephone number, and address; (III)
- f. Name, address, and telephone number of next of kin or legal representative; (III)
- g. Name, address, and telephone number of person to be notified in case of emergency; (III)
- h. Mortician's name, telephone number, and address; (III)
- i. Pharmacist's name, telephone number, and address. (III)

58.15(2) Resident clinical record. There shall be a separate clinical record for each resident admitted to a nursing facility with all entries current, dated, and signed. (III) The resident clinical record shall include:

- a. Admission record; (III)
- b. Admission diagnosis; (III)
- c. The record of the admission physical examination described in subrule 58.14(2). It shall include the resident's name, sex, age, pertinent medical history, current medical status, tuberculosis status, and any other information required to adequately assess the resident and whether the facility is able to meet the resident's needs; (III)
- d. Physician's certification that the resident requires no greater degree of nursing care than the facility is licensed to provide; (III)
- e. Orders for medication, treatment, and diet in writing and signed by an appropriate qualifying health care practitioner quarterly; (III)
- f. Progress notes.
 - (1) Physician shall enter a progress note at the time of each visit; (III)
 - (2) Other professionals, i.e., dentists, social workers, physical therapists, pharmacists, and others shall enter a progress note at the time of each visit; (III)

- g. All laboratory, X-ray, and other diagnostic reports; (III)
 - h. Nurse's record including:
 - (1) Admitting notes including time and mode of transportation; room assignment; disposition of valuables; symptoms and complaints; general condition; vital signs; and weight; (II, III)
 - (2) Routine notes including physician's visits; telephone calls to and from the physician; unusual incidents and accidents; change of condition; social interaction; and P.R.N. medications administered including time and reason administered, and resident's reaction; (II, III)
 - (3) Discharge or transfer notes including time and mode of transportation; resident's general condition; instructions given to resident or legal representative; list of medications and disposition; and completion of transfer form for continuity of care; (II, III)
 - (4) Death notes including notification of physician and family to include time, disposition of body, resident's personal possessions and medications; and complete and accurate notes of resident's vital signs and symptoms preceding death; (III)
 - i. Medication record.
 - (1) An accurate record of all medications administered shall be maintained for each resident. (II, III)
 - (2) Schedule II drug records shall be kept in accordance with state and federal laws; (II, III)
 - j. Death record. In the event of a resident's death, notations in the resident's record shall include the date and time of the resident's death, the circumstances of the resident's death, the disposition of the resident's body, and the date and time that the resident's family and physician were notified of the resident's death; (III)
 - k. Transfer form.
 - (1) The transfer form shall include identification data from the admission record, name of transferring institution, name of receiving institution, and date of transfer; (III)
 - (2) The nurse's report shall include resident attitudes, behavior, interests, functional abilities (activities of daily living), unusual treatments, nursing care, problems, likes and dislikes, nutrition, current medications (when last given), and condition on transfer; (III)
 - (3) The physician's report shall include reason for transfer, medications, treatment, diet, activities, significant laboratory and X-ray findings, and diagnosis and prognosis; (III)
 - l. Consultation reports shall indicate services rendered by allied health professionals in the facility or in health-centered agencies such as dentists, physical therapists, podiatrists, ophthalmologists, and others. (III)
- 58.15(3) Resident personal record.** Personal records may be kept as a separate file by the facility.
- a. Personal records may include factual information regarding personal statistics, family and responsible relative resources, financial status, and other confidential information.
 - b. Personal records shall be accessible to professional staff involved in planning for services to meet the needs of the resident. (III)
 - c. When the resident's records are closed, the information shall become a part of the final record. (III)
 - d. Personal records shall include a duplicate copy of the contract(s). (III)
- 58.15(4) Incident record.**
- a. Each nursing facility shall maintain an incident record report and shall have available incident report forms. (III)
 - b. Report of incidents shall be in detail on a printed incident report form or electronic form. (III)
 - c. The person in charge at the time of the incident shall prepare and sign the report. (III)
 - d. The report shall cover all accidents where there is apparent injury or where hidden injury may have occurred. (III)
 - e. The report shall cover all accidents or unusual occurrences within the facility or on the premises affecting residents, visitors, or employees. (III)
 - f. A copy of the incident report shall be kept on file in the facility. (III)
- 58.15(5) Retention of records.**
- a. Records shall be retained in the facility for five years following termination of services. (III)
 - b. Records shall be retained within the facility upon change of ownership. (III)

c. Rescinded, effective 7/14/82.

d. When the facility ceases to operate, the resident's record shall be released to the facility to which the resident is transferred. If no transfer occurs, the record shall be released to the individual's physician. (III)

58.15(6) Reports to the department. The licensee shall furnish statistical information concerning the operation of the facility to the department on request. (III)

58.15(7) Personnel record.

a. An employment record shall be kept for each employee, consisting of the following information: name and address of employee, social security number of employee, date of birth of employee, date of employment, experience and education, references, position in the home, criminal history and dependent adult abuse background checks, and date and reason for discharge or resignation. (III)

b. The personnel records shall be made available for review upon request by the department. (III)
[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.16(135C) Resident care and personal services.

58.16(1) Beds shall be made daily and adjusted as necessary. A complete change of linen shall be made at least once a week and more often if necessary. (III)

58.16(2) Residents shall receive sufficient supervision so that their personal cleanliness is maintained. (II, III)

58.16(3) Residents shall have clean clothing as needed to present a neat appearance, to be free of odors, and to be comfortable. Clothing shall be based on resident choice and shall be appropriate to residents' activities and to the weather. (III)

58.16(4) Rescinded, effective 7/14/82.

58.16(5) Residents shall be encouraged to leave their rooms and make use of the recreational room or living room of the facility. (III)

58.16(6) Residents shall not be required to pass through another's bedroom to reach a bathroom, living room, dining room, corridor, or other common areas of the facility. (III)

58.16(7) Rescinded, effective 7/14/82.

58.16(8) Uncontrollable residents shall be transferred or discharged from the facility in accordance with contract arrangements and requirements of Iowa Code chapter 135C. (II, III)

58.16(9) Except for those who request differently, residents who are not bedfast shall be fully dressed each day to maintain self-esteem and promote the residents' normal lifestyles. (III)

58.16(10) Residents shall receive a bath of their choice, based on the facility's accommodations, as needed to maintain proper hygiene. (II, III)

481—58.17 Rescinded, effective 7/14/82.

481—58.18(135C) Nursing care.

58.18(1) Individual health care plans shall be based on resident treatment decisions, the nature of the illness or disability, treatment, and care prescribed. Goals shall be developed by each discipline providing service, treatment, and care. These plans shall be in writing, revised as necessary, and kept current. They shall be made available to all those rendering the services and for review by the department. (III)

58.18(2) Rescinded IAB 4/2/14, effective 5/7/14.

58.18(3) The facility shall provide resident and family education as an integral part of restorative and supportive care. (III)

58.18(4) The facility shall provide prompt response from qualified staff for the resident's use of the nurse call system. (II, III) (Prompt response being considered as no longer than 15 minutes.)

[ARC 1398C, IAB 4/2/14, effective 5/7/14]

481—58.19(135C) Required nursing services for residents. The resident shall receive and the facility shall provide, as appropriate, the following required nursing services under the 24-hour direction of qualified nurses with ancillary coverage as set forth in these rules:

58.19(1) Activities of daily living.

- a. Bathing; (II, III)
- b. Daily oral hygiene (denture care); (II, III)
- c. Routine shampoo; (II, III)
- d. Nail care; (III)
- e. Shaving; (III)
- f. Daily care and application of prostheses (glasses, hearing aids, glass eyes, limb prosthetics, braces, or other assistive devices); (II, III)
 - g. Ambulation with equipment if applicable, or transferring, or positioning; (I, II, III)
 - h. Daily routine range of motion; (II, III)
 - i. Mobility (assistance with wheelchair, mechanical lift, or other means of locomotion); (I, II, III)
 - j. Elimination.
 - (1) Assistance to and from the bathroom and perineal care; (II, III)
 - (2) Bedpan assistance; (II, III)
 - (3) Care for incontinent residents; (II, III)
 - (4) Bowel and bladder training programs including in-dwelling catheter care (i.e., insertion and irrigation), enema and suppository administration, and monitoring and recording of intake and output, including solid waste; (I, II, III)
 - k. Colostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)
 - l. Ileostomy care (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II, III)
 - m. All linens necessary; (III)
 - n. Nutrition and meal service.
 - (1) Regular, therapeutic, modified diets, and snacks; (I, II, III)
 - (2) Mealtime preparation of resident; (II, III)
 - (3) Assistance to and from meals; (II, III)
 - (4) In-room meal service or tray service; (II, III)
 - (5) Assistance with food preparation and meal assistance including total assistance if needed; (II, III)
 - o. Assistance with adaptive devices; (II, III)
 - p. Enteral nutrition (to be performed by a registered nurse or licensed practical nurse only); (I, II, III)
 - q. Sufficient fluid intake to maintain proper hydration and health; (I, II, III)
- r. Promote initiation of self-care for elements of resident care; (II, III)
- s. Oral suctioning (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse). (I, II)

58.19(2) Medication and treatment.

- a. Administration of all medications as ordered by the physician including oral, instillations, topical, injectable (to be injected by a registered nurse or licensed practical nurse only); (I, II)
- b. Provision of the appropriate care and treatment of wounds, including pressure sores, to promote healing, prevent infection, and prevent new sores from developing; (I, II)
- c. Blood glucose monitoring; (I, II)
- d. Vital signs, blood pressure, and weights; (I, II)
- e. Ambulation and transfer; (II, III)
- f. Provision of restraints; (I, II)
- g. Administration of oxygen (to be performed only by a registered nurse or licensed practical nurse or by a qualified aide under the direction of a registered nurse or licensed practical nurse); (I, II)
- h. Provision of all treatments; (I, II, III)
- i. Provision of emergency medical care, including arranging for transportation, in accordance with written policies and procedures of the facility; (I, II, III)

j. Provision of accurate assessment and timely intervention for all residents who have an onset of adverse symptoms which represent a change in mental, emotional, or physical condition. (I, II, III)
[ARC 1398C, IAB 4/2/14, effective 5/7/14; ARC 2560C, IAB 6/8/16, effective 7/13/16]

481—58.20(135C) Duties of health service supervisor. Every nursing facility shall have a health service supervisor who shall:

- 58.20(1)** Direct the implementation of the physician's orders; (I, II)
- 58.20(2)** Plan for and direct the nursing care, services, treatments, procedures, and other services in order that each resident's needs and choices, where practicable, are met; (II, III)
- 58.20(3)** Review the health care needs and choices, where practicable, of each resident admitted to the facility and assist the attending physician in planning for the resident's care; (II, III)
- 58.20(4)** Develop and implement a written health care plan in cooperation with, to the extent practicable, the resident, the resident's family or the resident's legal representative, and others in accordance with instructions of the attending physician as follows:
 - a.* The written health care plan, based on the assessment and reassessment of the resident's health needs and choices, where practicable, is personalized for the individual resident and indicates care to be given, goals to be accomplished, and methods, approaches, and modifications necessary to achieve best results; (III)
 - b.* The health service supervisor is responsible for preparing, reviewing, supervising the implementation, and revising the written health care plan; (III)
 - c.* The health care plan is readily available for use by all personnel caring for the resident; (III)
- 58.20(5)** Initiate preventative and restorative nursing procedures for each resident so as to achieve and maintain the highest possible degree of function, self-care, and independence based on resident choice, where practicable; (II, III)
- 58.20(6)** Supervise health services personnel to ensure they perform the following restorative measures in their daily care of residents:
 - a.* Maintaining good bodily alignment and proper positioning; (II, III)
 - b.* Making every effort to keep the resident active except when contraindicated by physician's orders, and encouraging residents to achieve independence in activities of daily living by teaching self-care, transfer, and ambulation activities; (III)
 - c.* Assisting residents to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests as necessary; (III)
 - d.* Assisting residents to carry out prescribed therapy exercises between visits of the therapist; (III)
 - e.* Assisting residents with routine range of motion exercises; (III)
- 58.20(7)** Plan and conduct nursing staff orientation and in-service programs and provide for training of nurse's aides; (III)
- 58.20(8)** Plan with the resident and the resident's physician and family and health-related agencies for the care of the resident upon discharge; (III)
- 58.20(9)** Designate a responsible person to be in charge during absences; (III)
- 58.20(10)** Be responsible for all assignments and work schedules for all health services personnel to ensure that the health needs of the residents are met; (III)
- 58.20(11)** Ensure that all nurse's notes are descriptive of the care rendered including the resident's response; (III)
- 58.20(12)** Visit each resident routinely to be knowledgeable of the resident's current condition; (III)
- 58.20(13)** Evaluate in writing the performance of each individual on the health care staff on at least an annual basis. This evaluation shall be available for review in the facility to the department; (III)
- 58.20(14)** Keep the administrator informed of the resident's status; (III)
- 58.20(15)** Teach and coordinate rehabilitative health care including activities of daily living, promotion and maintenance of optimal physical and mental functioning; (III)
- 58.20(16)** Supervise serving of meals to ensure that individuals unable to assist themselves are promptly fed and that special eating adaptive devices are available as needed; (II, III)

58.20(17) Make available a nursing procedure manual which shall include all procedures practiced in the facility; (III)

58.20(18) Participate with the administrator in the formulation of written policies and procedures for resident services; (III)

58.20(19) The person in charge shall immediately notify the family of any accident, injury, or adverse change in the resident's condition requiring physician's notification. (III)

481—58.21(135C) Drugs, storage, and handling.

58.21(1) Drug storage for residents who are unable to take their own medications and require supervision shall meet the following requirements:

a. A cabinet with a lock, convenient to nursing service, shall be provided and used for storage of all drugs, solutions, and prescriptions; (III)

b. The drug storage cabinet shall be kept locked when not in use; (III)

c. The medication cabinet key shall be in the possession of the person directly responsible for issuing medications; (II, III)

d. Double-locked storage of Schedule II drugs shall not be required under single unit package drug distribution systems in which the quantity stored does not exceed a three-day supply and a missing dose can be readily detected. (II)

58.21(2) Drugs for external use shall be stored separately from drugs for internal use. (III)

58.21(3) Medications requiring refrigeration shall be kept in a refrigerator and separated from food and other items. A method for locking these medications shall be provided. (III)

58.21(4) All potent, poisonous, or caustic materials shall be stored separately from drugs. They shall be plainly labeled and stored in a specific, well-illuminated cabinet, closet, or storeroom and made accessible only to authorized persons. (I, II)

58.21(5) All flammable materials shall be specially stored and handled in accordance with applicable local and state fire regulations. (II)

58.21(6) A properly trained person shall be charged with the responsibility of administering nonparenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college.

c. Prior to taking a department-approved medication aide course, the individual shall:

(1) Successfully complete an approved nurse aide course, nurse aide training and testing program or nurse aide competency examination.

(2) Be employed in the same facility and work at least 480 hours prior to the start of the medication aide course.

(3) Have a letter of recommendation for admission to the medication aide course from the employing facility.

d. A person who is a nursing student may take the challenge examination in place of taking a medication aide course. This individual shall do all of the following before taking the medication aide challenge examination:

(1) Complete a clinical or nursing theory course within six months before taking the challenge examination;

(2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination;

(3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating the individual is competent in medication administration.

(4) Successfully complete a department-approved nurse aide competency evaluation.

e. A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination.

The requirements of paragraph “*c*” of this subrule do not apply to this individual.

58.21(7) Unless the unit dose system is used, the person assigned the responsibility of medication administration must complete the procedure by personally preparing the dose, observing the actual act of swallowing the oral medication, and charting the medication. (II) In facilities where the unit dose system is used, the person assigned the responsibility must complete the procedure by observing the actual act of swallowing the medication and charting the medication. Medications shall be prepared on the same shift of the same day that they are administered, (II) unless the unit dose system is used.

58.21(8) An accurate written record of medications administered shall be made by the individual administering the medication. (III)

58.21(9) Records shall be kept of all medications received and dispensed in accordance with 42 CFR 483.45(b)(2) and federal interpretive guidelines. (III)

58.21(10) Any unusual resident reaction shall be reported to the physician at once. (II)

58.21(11) A policy shall be established by the facility in conjunction with a licensed pharmacist to govern the distribution of prescribed medications to residents who are on leave from the facility. (III)

a. Medication may be issued to residents who will be on leave from a facility for less than 24 hours. Notwithstanding the prohibition against paper envelopes in 58.21(14) “*a*,” non-child-resistant containers may be used. Each container may hold only one medication. A label on each container shall indicate the date, the resident’s name, the facility, the medication, its strength, dose, and time of administration.

b. Medication for residents on leave from a facility longer than 24 hours shall be obtained in accordance with requirements established by the Iowa board of pharmacy.

c. Medication distributed as above may be issued only by a nurse responsible for administering medication. (I, II, III)

58.21(12) Emergency medications. A nursing facility shall provide emergency medications pursuant to the following requirements: (III)

a. Prescription drugs as well as nonprescription items must be prescribed or approved by the physician, in consultation with the pharmacist, who provides emergency service to the facility; (III)

b. The emergency medications shall be stored in an accessible place; (III)

c. A list of the emergency medications and quantities of each item shall be maintained by the facility; (III)

d. The container holding the emergency medications shall be closed with a seal which may be broken when drugs are required in an emergency or for inspection; (III)

e. Any item removed from the emergency medications shall be replaced within 48 hours; (III)

f. A permanent record shall be kept of each time the emergency medications are used; (III)

g. The emergency medications shall be inspected by a pharmacist at least once every three months to determine the stability of items. (III)

58.21(13) Drug handling.

a. Bulk supplies of prescription drugs shall not be kept in a nursing facility unless a licensed pharmacy is established in the facility under the direct supervision and control of a pharmacist or the prescription drugs are stored in an automated medication distribution system (AMDS) in compliance with standards established by the Iowa board of pharmacy. (III)

b. Inspection of drug storage condition shall be made by the health service supervisor and a registered pharmacist not less than once every three months. The inspection shall be verified by a report signed by the nurse and pharmacist and filed with the administrator. The report shall include, but not be limited to, certifying absence of the following: expired drugs, deteriorated drugs, improper labeling, drugs for which there is no current physician’s order, and drugs improperly stored. (III)

c. If the facility permits licensed nurses to dilute or reconstitute drugs at the nursing station, distinctive supplementary labels shall be available for the purpose. The notation on the label shall be so made as to be indelible. (III)

d. Dilution and reconstitution of drugs and their labeling shall be done by the pharmacist whenever possible. If not possible, the following shall be carried out only by the licensed nurse:

(1) Specific directions for dilution or reconstitution and expiration date should accompany the drug; (III)

(2) A distinctive supplementary label shall be affixed to the drug container when diluted or reconstituted by the nurse for other than immediate use. (III) The label shall bear the following: resident's name, dosage and strength per unit/volume, nurse's name, expiration date, and date and time of dilution. (III)

58.21(14) Drug safeguards.

a. All prescribed medications shall be clearly labeled indicating the resident's full name, physician's name, prescription number, name and strength of drug, dosage, directions for use, date of issue, and name and address and telephone number of pharmacy or physician issuing the drug. Where unit dose is used, prescribed medications shall, as a minimum, indicate the resident's full name, physician's name, name and strength of drug, and directions for use. Standard containers shall be utilized for dispensing drugs. Paper envelopes shall not be considered standard containers. Prescription medications distributed from an AMDS shall follow any labeling standards established by the Iowa board of pharmacy. (III)

b. Medication containers having soiled, damaged, illegible or makeshift labels, or medication samples shall be returned to the issuing pharmacist, pharmacy, or physician for relabeling or disposal. (III)

c. There shall be no medications or any solution in unlabeled containers. (II, III)

d. The medications of each resident shall be kept or stored in the originally received containers. (II, III)

e. Labels on containers shall be clearly legible and firmly affixed. No label shall be superimposed on another label of a drug container. (II, III)

f. When a resident is discharged or leaves the facility, the unused prescription shall be sent with the resident or with a legal representative only upon the written order of a physician. (III)

g. Unused prescription drugs prescribed for residents who are deceased shall be returned to the supplying pharmacist. (III)

h. Prescriptions shall be refilled only with the permission of the attending physician. (II, III)

i. No medications prescribed for one resident may be administered to or allowed in the possession of another resident. (II)

j. Instructions shall be requested of the Iowa board of pharmacy concerning disposal of unused Schedule II drugs prescribed for residents who have died or for whom the Schedule II drug was discontinued. (III)

k. There shall be a formal routine for the proper disposal of discontinued medications within a reasonable but specified time. These medications shall not be retained with the resident's current medications. Discontinued drugs shall be destroyed by the responsible nurse with a witness and a notation made to that effect or returned to the pharmacist for destruction or resident credit. Drugs listed under the Schedule II drugs shall be disposed of in accordance with the provisions of the Iowa board of pharmacy. (II, III)

l. All medication orders which do not specifically indicate the number of doses to be administered or the length of time the drug is to be administered shall be stopped automatically after a given time period. The automatic stop order may vary for different types of drugs. The physician, in consultation with the pharmacist serving the home, shall institute policies and provide procedures for review and endorsement of stop orders on drugs. This policy shall be conveniently located for personnel administering medications. (II, III)

m. No resident shall be allowed to keep possession of any medications unless the attending physician has certified in writing on the resident's medical record that the resident is mentally and physically capable of doing so. (II)

n. Residents who have been certified in writing by the physician as capable of taking their own medications may retain these medications in their bedroom, but locked storage must be provided. (II)

o. No medications or prescription drugs shall be administered to a resident without a written order signed by the attending physician. (II)

p. A qualified nurse shall:

(1) Establish a medication schedule system which identifies the time and dosage of each medication prescribed for each resident, is based on the resident's desired routine, and is approved by the resident's physician. (II, III)

(2) Establish a medication record containing the information specified above needed to monitor each resident's drug regimen. (II, III)

q. Telephone orders shall be taken by a qualified nurse. Orders shall be written into the resident's record and signed by the person receiving the order. Telephone orders shall be submitted to the physician for signature within 48 hours. (III)

r. A pharmacy operating in connection with a nursing facility shall comply with the provisions of the pharmacy law requiring registration of pharmacies and the regulations of the Iowa board of pharmacy. (III)

s. In a nursing facility with a pharmacy or drug supply, service shall be under the personal supervision of a pharmacist licensed to practice in the state of Iowa. (III)

58.21(15) Drug administration.

a. Injectable medications shall be administered as permitted by Iowa law by a qualified nurse, physician, pharmacist, or physician assistant (PA). In the case of a resident who has been certified by the resident's physician or physician assistant (PA) as capable of taking the resident's own insulin, the resident may inject the resident's own insulin. (II)

b. An individual inventory record shall be maintained for each Schedule II drug prescribed for each resident. (II)

c. The health service supervisor shall be responsible for the supervision and direction of all personnel administering medications. (II)

[ARC 1050C, IAB 10/2/13, effective 11/6/13; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.22(135C) Rehabilitative services. Rehabilitative services shall be provided to maintain function or improve the resident's ability to carry out the activities of daily living.

58.22(1) Physical therapy services.

a. Each facility shall have a written agreement with a licensed physical therapist to provide physical therapy services. (III)

b. Physical therapy shall be rendered only by a physical therapist licensed to practice in the state of Iowa. All personnel assisting with the physical therapy of residents must be under the direction of a licensed physical therapist. (II, III)

c. The licensed physical therapist shall:

(1) Evaluate the resident and prepare a physical therapy treatment plan conforming to the medical orders and goals; (III)

(2) Consult with other personnel in the facility who are providing resident care and plan with them for the integration of a physical therapy treatment program into the overall health care plan; (III)

(3) Instruct the nursing personnel responsible for administering selected restorative procedures between treatments; (III)

(4) Present programs in the facility's in-service education programs. (III)

d. Treatment records in the resident's medical chart shall include:

(1) The prescription for treatment; (III)

(2) An initial evaluation note by the physical therapist; (III)

(3) The physical therapy care plan defining clearly the long-term and short-term goals and outlining the current treatment program; (III)

(4) Notes of the treatments given and changes in the resident's condition; (III)

(5) A complete discharge summary to include recommendations for nursing staff and family. (III)

e. There shall be adequate facilities, space, appropriate equipment, and storage areas as are essential to the treatment or examinations of residents. (III)

58.22(2) Other rehabilitative services.

a. The facility shall arrange for specialized and supportive rehabilitative services when such services are ordered by a physician. (III) These may include audiology and occupational therapy.

b. Audiology services shall be under the direction of a person licensed in the state of Iowa by the board of speech pathology and audiology. (II, III)

c. Occupational therapy services shall be under the direction of a qualified occupational therapist who is currently registered by the American Occupational Therapy Association. (II, III)

d. The appropriate professional shall:

(1) Develop the treatment plan and administer or direct treatment in accordance with the prescription and rehabilitation goals; (III)

(2) Consult with other personnel within the facility who are providing resident care and plan with them for the integration of a treatment program into the overall health care plan. (III)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.23(135C) Dental, diagnostic, and other services.

58.23(1) Dental services.

a. The nursing facility personnel shall assist residents to obtain regular and emergency dental services. (III)

b. Transportation arrangements shall be made when necessary for the resident to be transported to the dentist's office. (III)

c. Dental services shall be performed only on the request of the resident, responsible relative, or legal representative. The resident's physician shall be advised of the resident's dental problems. (III)

d. All dental reports or progress notes shall be included in the clinical record. (III)

e. Nursing personnel shall assist the resident in carrying out dentist's recommendations. (III)

f. Dentists shall be asked to participate in the in-service program of the facility. (III)

58.23(2) Diagnostic services.

a. The nursing facility shall make provisions for promptly securing required clinical laboratory, X-ray, and other diagnostic services. (III)

b. All diagnostic services shall be provided only on the written, signed order of a physician. (III)

c. Agreements shall be made with the local hospital laboratory or independent laboratory to perform specific diagnostic tests when they are required. (III)

d. Transportation arrangements for residents shall be made, when necessary, to and from the source of service. (III)

e. Copies of all diagnostic reports shall be requested by the facility and included in the resident's clinical record. (III)

f. The physician ordering the specific diagnostic service shall be promptly notified of the results. (III)

g. Simple tests such as customarily done by nursing personnel for diabetic residents may be performed in the facility. (III)

58.23(3) Other services.

a. The nursing facility shall assist residents to obtain such supportive services as requested by the physician. (III)

b. Transportation arrangements shall be made when necessary. (III)

c. Services could include the need for prosthetic devices, glasses, hearing aids, and other necessary items. (III)

481—58.24(135C) Dietary.

58.24(1) Organization of dietetic services. The facility shall meet the needs of the residents and provide the services listed in this standard. If a service is contracted out, the contractor shall meet the

same standard. A written agreement shall be formulated between the facility and the contractor and shall convey to the department the right to inspect the food service facilities of the contractor. (III)

a. There shall be written policies and procedures for dietetic services that include staffing, nutrition, menu planning, therapeutic diets, preparation, food service, ordering, receiving, storage, sanitation, and staff hygiene. The policies and procedures shall be made available for use by dietetic services. (III)

b. There shall be written job descriptions for each position in dietetic services. The job descriptions shall be made available for use by dietetic services. (III)

58.24(2) Dietary staffing. The facility shall employ dietary staff in accordance with 42 CFR 483.60(a).

a. Reserved.

b. The supervisor shall have overall supervisory responsibility for dietetic services and shall be employed for a sufficient number of hours to complete management responsibilities that include:

(1) Participating in regular conferences with the consultant dietitian, the administrator and other department heads; (III)

(2) Writing menus with consultation from the dietitian and seeing that current menus are posted and followed and that menu changes are recorded; (III)

(3) Establishing and maintaining standards for food preparation and service; (II, III)

(4) Participating in selection, orientation, and in-service training of dietary personnel; (II, III)

(5) Supervising activities of dietary personnel; (II, III)

(6) Maintaining up-to-date records of residents identified by name, location and diet order; (III)

(7) Visiting residents to learn individual needs and communicating with other members of the health care team regarding nutritional needs of residents when necessary; (II, III)

(8) Keeping records of repairs of equipment in dietetic services. (III)

c. A minimum of one person with supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has received training from and passed a test that is part of an American National Standards Institute (ANSI)-accredited Certified Food Protection Manager Program.

d. The facility shall employ sufficient supportive personnel to carry out the following functions:

(1) Preparing and serving adequate amounts of food that are handled in a manner to be bacteriologically safe; (II, III)

(2) Washing and sanitizing dishes, pots, pans and equipment at temperatures required by procedures described in the Food Code as defined in Iowa Code section 137F.2; (II, III)

(3) Serving therapeutic diets as prescribed by the physician or other qualified health care practitioner, including a licensed dietitian if delegated by the physician and within the dietitian's scope of practice, and following the planned menu. (II, III)

e. The facility may assign simultaneous duties in the kitchen and laundry, housekeeping, or nursing service to appropriately trained personnel. Proper sanitary and personal hygiene procedures shall be followed in compliance with the Food and Drug Administration Food Code adopted pursuant to Iowa Code section 137F.2 and 481—Chapter 31. (II, III)

f. If the dietetic service supervisor is not a licensed dietitian, a consultant dietitian is required. The consultant dietitian shall be licensed by the state of Iowa pursuant to Iowa Code chapter 152A.

g. Consultants' visits shall be scheduled to be of sufficient duration and at a time convenient to:

(1) Record, in the resident's medical record, any observations, assessments and information pertinent to medical nutrition therapy; (I, II, III)

(2) Work with residents and staff on resident care plans; (III)

(3) Consult with the administrator and others on developing and implementing policies and procedures; (III)

(4) Write or approve general and therapeutic menus; (III)

(5) Work with the dietetic supervisor on developing procedures, recipes and other management tools; (III)

(6) Present planned in-service training and staff development for food service employees and others. Documentation of consultation shall be available for review in the facility by the department. (III)

h. In facilities licensed for more than 15 beds, dietetic services shall be available for a minimum of a 12-hour span extending from the time of preparation of breakfast through supper. (III)

58.24(3) Nutrition and menu planning.

a. Menus shall be planned and followed to meet the nutritional needs of each resident in accordance with a qualified health care practitioner's orders and in consideration of the resident's allergies, intolerances, choices, and preferences. (II, III)

b. Menus shall be planned to provide 100 percent of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. A current copy of the Simplified Diet Manual or other suitable diet manual shall be available and used in the planning and serving of all meals. (II)

c. At least three meals or their equivalent shall be served daily at regular hours. (II)

(1) There shall be no more than a 14-hour span between a substantial evening meal and breakfast except as provided in subparagraph (3) below. (II, III)

(2) Suitable, nourishing alternative meals and snacks must be provided to residents who want to eat at nontraditional times or outside of scheduled meal service times, consistent with the resident plan of care and 42 CFR 483.60(f) and federal interpretive guidelines. (II, III)

(3) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast of the following day. The current resident group must agree to this meal span and a nourishing snack must be served. (II)

d. Menus shall include a variety of foods prepared in various ways. (III)

e. Menus shall be written at least one week in advance. The current menu shall be located in an accessible place in the dietetic services department for easy use by persons purchasing, preparing and serving food. (III)

f. Records of menus as served shall be filed and maintained for 30 days and shall be available for review by department personnel. When substitutions are necessary, they shall be of similar nutritive value and recorded. (III)

g. A file of tested recipes adjusted to the number of people to be served in the facility shall be maintained. (III)

h. Alternate foods of similar nutritional value shall be offered to residents who refuse the food served. (II, III)

58.24(4) Therapeutic diets and nutritional status.

a. The facility shall ensure that each resident has a nutritional assessment completed by the licensed dietitian within 14 days of admission or after the facility determines there has been a significant change in the resident's physical or mental condition that addresses the residents' medical condition and therapeutic dietary needs, desires and rights in regard to their nutritional plan. (I, II, III)

b. Therapeutic diets shall be prescribed by the resident's physician or other qualified health care practitioner. A current edition of the Simplified Diet Manual or other suitable diet manual shall be readily available to physicians, nurses and dietetic services personnel. A current diet manual shall be used as a guide for writing menus for therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food. (II, III)

c. Personnel responsible for planning, preparing and serving therapeutic diets shall receive instructions on those diets. (II, III)

d. The facility shall ensure that each resident maintains acceptable parameters of nutritional status, such as body weight, unless the resident's clinical condition demonstrates that this is not possible. (I, II, III)

58.24(5) Food handling, preparation and service. All food shall be handled, prepared and served in compliance with the requirements of the Food and Drug Administration Food Code adopted under provisions of Iowa Code section 137F.2. (I, II, III) In addition, the following shall apply.

- a. Methods used to prepare foods shall be those which conserve nutritive value and flavor and meet the taste preferences of the residents. (III)
- b. Foods shall be attractively served. (III)
- c. Foods shall be cut up, chopped, ground or blended to meet individual needs. (I, II, III)
- d. Self-help devices shall be provided as needed. (II, III)
- e. Disposables shall not be used routinely. Plasticware, china and glassware that are unsightly, unsanitary or hazardous because of chips, cracks or loss of glaze shall be discarded. (II, III)
- f. All food that is transported through public corridors shall be covered. (III)
- g. Residents may be allowed in the food preparation area. (III)
- h. The food preparation area may be used as a dining area for residents, staff or food service personnel if the facility engages in person-directed care. (III)
- i. There shall be effective written procedures established for cleaning all work and serving areas. (III)
- j. A schedule of cleaning duties to be performed daily shall be posted. (III)
- k. An exhaust system and hood shall be clean, operational and maintained in good repair. (III)
- l. The food service area shall be located so it will not be used as a passageway by residents, guests or non-food service staff. (III)

58.24(6) *Paid nutritional assistants.* A paid nutritional assistant means an individual who meets the requirements of this subrule and who is an employee of the facility or an employee of a temporary employment agency employed by the facility. A facility may use an individual working in the facility as a paid nutritional assistant only if that individual has successfully completed a state-approved training program for paid nutritional assistants. (I, II, III)

a. *Training program requirements.*

- (1) A state-approved training program for paid nutritional assistants must include, at a minimum, eight hours of training in the following areas:
 1. Feeding techniques.
 2. Assistance with feeding and hydration.
 3. Communication and interpersonal skills.
 4. Appropriate responses to resident behavior.
 5. Safety and emergency procedures, including the Heimlich maneuver.
 6. Infection control.
 7. Resident rights.
 8. Recognizing changes in residents that are inconsistent with their normal behavior and reporting these changes to the supervisory nurse.
- (2) In addition to the training program requirements specified in subparagraph (1), the training program must include at least four hours of classroom study, two hours of supervised laboratory work, and two hours of supervised clinical experience.
- (3) A facility that offers a paid nutritional assistant training program must provide sufficient supplies in order to teach the objectives of the course.
- (4) All paid nutritional assistant training program instructors shall be registered nurses. Other qualified health care professionals may assist the instructor in teaching the classroom portion and clinical or laboratory experience. The ratio of students to instructor shall not exceed ten students per instructor in the clinical setting.
- (5) Each individual enrolled in a paid nutritional assistant training program shall complete a 50-question multiple choice written test and must obtain a score of 80 percent or higher. In addition, the individual must successfully perform the feeding of a resident in a clinical setting. A registered nurse shall conduct the final competency determination.
- (6) If an individual does not pass either the written test or competency demonstration, the individual may retest the failed portion a second time. If the individual does not pass either the written test or competency demonstration portion the second time, the individual shall not be allowed to retest.

b. Program approval. A facility or other entity may not offer or teach a paid nutritional assistant training program until the department has approved the program. Individuals trained in a program not approved by the department will not be allowed to function as paid nutritional assistants.

(1) A facility or other institution offering a paid nutritional assistant training program must provide the following information about the training program to the department before offering the program or teaching paid nutritional assistants:

1. Policies and procedures for program administration.
2. Qualifications of the instructors.
3. Maintenance of program records, including attendance records.
4. Criteria for determining competency.
5. Program costs and refund policies.
6. Lesson plans, including the objectives to be taught, skills demonstrations, assignments, quizzes, and classroom, laboratory and clinical hours.

(2) The facility or other institution offering a paid nutritional assistant training program must submit the materials specified in subparagraph (1) for department review. The department shall, within ten days of receipt of the material, advise the facility or institution whether the program is approved, or request additional information to assist the department in determining whether the curriculum meets the requirements for a paid nutritional assistant training program. Before approving any paid nutritional assistant training program, the department shall determine whether the curriculum meets the requirements specified in this subrule. The department shall maintain a list of facilities and institutions eligible to provide paid nutritional assistant training. (I, II, III)

(3) A facility shall maintain a record of all individuals who have successfully completed the required training program and are used by the facility as paid nutritional assistants. The individual shall complete the training program with a demonstration of knowledge and competency skills necessary to serve as a paid nutritional assistant. (I, II, III)

(4) The facility or other institution providing the training shall, within ten calendar days of an individual's successful completion of the training program, provide the individual with a signed and dated certificate of completion. A facility that employs paid nutritional assistants shall maintain on file copies of the completed certificate and skills checklist for each individual who has successfully completed the training program. (I, II, III)

c. Working restrictions.

(1) A paid nutritional assistant must work under the supervision of a registered nurse or a licensed practical nurse. In an emergency, a paid nutritional assistant must call a supervisory nurse on the resident call system for help. (I, II, III)

(2) A facility must ensure that a paid nutritional assistant feeds only residents who have no complicated feeding problems. Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube, parenteral or intravenous feedings. The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care. (I, II, III)

[ARC 2560C, IAB 6/8/16, effective 7/13/16; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.25(135C) Social services program.

58.25(1) The administrator or designee shall be responsible for developing a written, organized orientation program for all residents. (III)

58.25(2) The program shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

58.25(3) The social services plan, including specific goals and regular evaluation of progress, shall be incorporated into the overall plan of care. (III)

481—58.26(135C) Resident activities program.

58.26(1) *Organized activities.* Each nursing facility shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity program shall be designed to meet the needs and interests of each resident and to assist residents in continuing normal activities within limitations set by the resident's physician. This shall include helping residents continue in their individual interests or hobbies. (III)

b. The program shall include individual goals for each resident. (III)

c. The program shall include both group and individual activities. (III)

d. No resident shall be forced to participate in the activity program. (III)

e. The activity program shall include suitable activities for those residents unable to leave their rooms. (III)

f. The program shall be incorporated into the overall health plan and shall be designed to meet the goals as written in the plan.

58.26(2) *Coordination of activities program.*

a. Each nursing facility shall employ a person to direct the activities program. (III)

b. Staffing for the activity program shall be sufficient to meet the residents' activity needs. (II, III)

c. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

d. There shall be a written plan for personnel coverage when the activity coordinator is absent during scheduled working hours. (III)

58.26(3) *Duties of activity coordinator.* The activity coordinator shall:

a. Have access to all residents' records excluding financial records; (III)

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Individual resident progress notes recorded at regular intervals (at least quarterly). A copy of these notes shall be placed in the resident's clinical record; (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

58.26(4) *Supplies, equipment, and storage.*

a. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III) These may include: books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

[ARC 7033C, IAB 5/31/23, effective 7/5/23; Editorial change: IAC Supplement 6/28/23]

481—58.27(135C) Certified volunteer long-term care ombudsman program. Rescinded ARC 7033C, IAB 5/31/23, effective 7/5/23.

481—58.28(135C) Safety. The licensee of a nursing facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

58.28(1) *Fire safety.*

a. All nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

58.28(2) *Safety duties of administrator.* The administrator shall have a written emergency plan to be followed in the event of fire, tornado, explosion, or other emergency. (III)

a. The plan shall be posted. (III)

b. In-service shall be provided to ensure that all employees are knowledgeable of the emergency plan. (III)

58.28(3) *Resident safety.*

a. Residents shall be permitted to smoke only where proper facilities are provided. Smoking shall not be permitted in bedrooms. Smoking by residents considered to be careless shall be prohibited except when the resident is under direct supervision. (II, III)

b. Smoking is prohibited in all rooms where oxygen is being administered or in rooms where oxygen is stored. (II, III)

c. Whenever full or empty tanks of oxygen are being used or stored, they shall be securely supported in an upright position. (II, III)

d. Smoking shall be permitted only in posted areas. (II, III)

e. Each resident shall receive adequate supervision to protect against hazards from self, others, or elements in the environment. (I, II, III)

f. Residents shall be protected against physical or environmental hazards to themselves. (I, II, III)

[ARC 1398C, IAB 4/2/14, effective 5/7/14]

481—58.29(135C) Resident care.

58.29(1) There shall be a readily available supply of self-help and ambulation devices such as wheelchairs, walkers, and such other devices maintained in good repair that will meet the current needs of all residents. (III)

58.29(2) The facility shall ensure that each ambulatory resident has well-fitting shoes to provide support and prevent slipping. (III)

58.29(3) Equipment for personal care shall be maintained in a safe and sanitary condition. (II, III)

58.29(4) The expiration date for sterile equipment shall be exhibited on its wrappings. (III)

58.29(5) Residents who have been known to wander shall be provided with appropriate means of identification. (II, III)

58.29(6) Electric heating pads, blankets, or sheets shall be used only on the written order of a physician, when allowed by the Life Safety Code or applicable state or local fire regulations. (II, III)

481—58.30 Rescinded, effective 7/14/82.

481—58.31(135C) Housekeeping.

58.31(1) Written procedures shall be established and implemented for daily and weekly cleaning schedules. (III)

58.31(2) Each resident unit shall be cleaned on a routine schedule. (III)

58.31(3) All rooms, corridors, storage areas, linen closets, attics, and basements shall be kept in a clean, orderly condition, free of unserviceable furniture and equipment and accumulations of refuse. (III)

58.31(4) A hallway or corridor shall not be used for storage of equipment. (III)

58.31(5) All odors shall be kept under control by cleanliness and proper ventilation. (III)

58.31(6) Clothing worn by personnel shall be clean and washable. (III)

58.31(7) Housekeeping and maintenance personnel shall be provided with well-constructed and properly maintained equipment appropriate to the function for which it is to be used. (III)

58.31(8) All furniture, bedding, linens, and equipment shall be cleaned periodically and before use by another resident. (III)

58.31(9) Polishes used on floors shall provide a nonslip finish. (III)

58.31(10) *Throw or scatter rugs shall not be permitted. (III)

*Objection. For text of Objection, see IAC Supp., Part I, 9/7/77. For text of Filed rules, 470—Chapter 58, see IAC Supp. 10/5/77.

58.31(11) Entrances, exits, steps, and outside walkways shall be kept free from ice, snow, and other hazards. (II, III)

58.31(12) Residents shall not have access to storage areas for all cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable materials. (II, III)

58.31(13) Sufficient numbers of noncombustible trash containers, which have covers, shall be available. (III)

58.31(14) Definite procedures shall be established for training housekeeping personnel. (III)

58.31(15) Rescinded IAB 12/6/06, effective 1/10/07.

58.31(16) There shall be provisions for the cleaning and storage of housekeeping equipment and supplies for each nursing unit. (III)

58.31(17) Bathtubs, shower stalls, or lavatories shall not be used for laundering, cleaning of utensils and mops, or for storage. (III)

58.31(18) Bedside utensils shall be stored in enclosed cabinets. (III)

58.31(19) Kitchen sinks shall not be used for the cleaning of mops, soaking of laundry, cleaning of bedside utensils, nursing utensils, or dumping of wastewater. (III)

58.31(20) Personal possessions of residents which may constitute hazards to themselves or others shall be removed and stored. (III)

481—58.32(135C) Maintenance.

58.32(1) Each facility shall establish a maintenance program in writing to ensure the continued maintenance of the facility, to promote good housekeeping procedures, and to ensure sanitary practices throughout the facility. (III)

58.32(2) The building, grounds, and other buildings shall be maintained in a clean, orderly condition and in good repair. (III)

58.32(3) Draperies and furniture shall be clean and in good repair. (III)

58.32(4) Cracks in plaster, peeling wallpaper or paint, and tears or splits in floor coverings shall be promptly repaired or replaced in a professional manner. (III)

58.32(5) The electrical systems, including appliances, cords, and switches, shall be maintained to guarantee safe functioning and comply with the national electrical code. (III)

58.32(6) All plumbing fixtures shall function properly and comply with the state plumbing code. (III)

58.32(7) Yearly inspections of the heating and cooling systems shall be made to guarantee safe operation. Documentation of these inspections shall be available for review. (III)

58.32(8) The building, grounds, and other buildings shall be kept free of breeding areas for flies, other insects, and rodents. (III)

58.32(9) The facility shall be kept free of flies, other insects, and rodents. (III)

58.32(10) Maintenance personnel.

a. A written program shall be established for the orientation of maintenance personnel. (III)

b. Maintenance personnel shall:

(1) Follow established written maintenance programs; (III)

(2) Be provided with appropriate, well-constructed, and properly maintained equipment. (III)

481—58.33(135C) Laundry.

58.33(1) All soiled linens shall be collected in and transported to the laundry room in closed, leakproof laundry bags or covered, impermeable containers. (III)

58.33(2) Except for related activities, the laundry room shall not be used for other purposes. (III)

58.33(3) Procedures shall be written for the proper handling of wet, soiled, and contaminated linens. (III)

58.33(4) Residents' personal laundry shall be marked with an identification. (III)

58.33(5) Bed linens, towels, and washcloths shall be clean and stain-free. (III)

481—58.34(135C) Garbage and waste disposal.

58.34(1) All garbage shall be gathered, stored, and disposed of in a manner that will not permit transmission of disease, create a nuisance, or provide a breeding or feeding place for vermin or insects. (III)

58.34(2) All containers for refuse shall be watertight, rodent-proof, and have tight-fitting covers. (III)

58.34(3) All containers shall be thoroughly cleaned each time the containers are emptied. (III)

58.34(4) All wastes shall be properly disposed of in compliance with local ordinances and state codes. (III)

58.34(5) Special provision shall be made for the disposal of soiled dressings and similar items in a safe, sanitary manner. (III)

481—58.35(135C) Buildings, furnishings, and equipment.

58.35(1) Buildings—general requirements.

a. For purposes of computation of usable floor space in bedrooms and other living areas of the facility, that part of the room having no less than seven feet of ceiling height shall be used. Usable floor space may include irregularities in the rooms such as alcoves and offsets with approval of the department. Usable floor space shall not include space needed for corridor door swings or wardrobes being used as a substitute for closet space. (III)

b. Portable emergency lights in good working condition shall be available at all times, at a ratio of one light per one employee on duty from 6 p.m. to 6 a.m. (III)

c. All windows shall be supplied with curtains and shades or drapes which are kept clean and in good repair. (III)

d. Light fixtures shall be so equipped to prevent glare and to prevent hazards to the residents. (III)

e. Exposed heating pipes, hot water pipes, or radiators in rooms and areas used by residents and within reach of residents shall be covered or protected to prevent injury or burns to residents. (II, III)

f. All fans located within seven feet of the floor shall be protected by screen guards of not more than one-half-inch mesh. (III)

g. Whenever glass sliding doors or transparent panels are used, they shall be marked conspicuously. (III)

h. The facility shall meet the equivalent requirements of the appropriate group occupancy of the state building code. (III)

i. No part of any room shall be enclosed, subdivided, or partitioned unless such part is separately lighted and ventilated and meets such other requirements as its usage and occupancy dictates, except closets used for the storage of residents' clothing. (III)

58.35(2) Furnishings and equipment.

a. All furnishings and equipment shall be durable, cleanable, and appropriate to its function and in accordance with the department's approved program of care. (III)

b. All resident areas shall be decorated, painted, and furnished to provide a home-like atmosphere. (III)

c. Upholstery materials shall be moisture- and soil-resistant, except on furniture provided by the resident and the property of the resident. (III)

58.35(3) Dining and living rooms.

a. Every facility shall have a dining room and a living room easily accessible to all residents. (III)

b. Dining rooms and living rooms shall at no time be used as bedrooms. (III)

c. Dining rooms and living rooms shall be available for use by residents at appropriate times to provide periods of social and diversional individual and group activities. (III)

d. A combination dining room and living room may be permitted if the space requirements of a multipurpose room as provided in 58.35(3) "e" are met. (III)

e. Multipurpose rooms. When space is provided for multipurpose dining and activities and recreational purposes, the area shall total at least 30 square feet per licensed bed for the first 100 beds and 27 square feet per licensed bed for all beds in excess of 100. An open area of sufficient size shall

be provided to permit group activities such as religious meetings or presentation of demonstrations or entertainment. (III)

f. Living rooms.

(1) Living rooms shall be maintained for the use of residents and their visitors and may be used for recreational activities. (III)

(2) Living rooms shall be suitably provided with parlor furniture, television and radio receivers in good working order, recreational material such as games, puzzles, and cards, and reading material such as current newspapers and magazines. Furnishings and equipment of the room should be such as to allow group activities. (III)

(3) Card tables or game tables shall be made available. The tables should be of a height to allow a person seated in a wheelchair to partake in the games or card playing. (III)

(4) Chairs of proper height and appropriate to their use shall be provided for seating residents at game tables and card tables. (III)

g. Dining rooms.

(1) Dining rooms shall be furnished with dining tables and chairs appropriate to the size and function of the facility. These rooms and furnishings shall be kept clean and sanitary. (III)

(2) Dining tables and chairs shall be provided. (III)

(3) Dining tables should be so constructed that a person seated in a wheelchair can dine comfortably. (III)

(4) Tables shall be of sturdy construction with smooth, durable, nonpermeable tops that can be cleaned with a detergent sanitizing solution. (III)

(5) Dining chairs shall be sturdy and comfortable. Some arm chairs should be provided for ease of movement for some residents. (III)

(6) Residents shall be encouraged to eat in the dining room. (III)

58.35(4) Bedrooms.

a. Each resident shall be provided with a standard, single, or twin bed that is substantially constructed and in good repair. Rollaway beds, metal cots, or folding beds are not acceptable. Seventy-five percent of the beds shall have a spring with an adjustable head and foot section. A resident shall have the right to sleep in a chair per the resident's request and to have the bed removed from the room to allow for additional space. (III)

b. Each bed shall be equipped with the following: casters or glides unless a low bed and mattress are being used for fall precautions; a clean, comfortable, well-constructed mattress approximately five inches thick and standard in size for the bed; clean, comfortable pillows of average size; and moisture-proof covers and sheets as necessary to keep the mattress and pillows dry and clean. (III)

c. Each resident shall have a bedside table with a drawer to accommodate personal possessions. (III)

d. There shall be a comfortable chair, either a rocking chair or armchair, per resident bed. The resident's personal wishes shall be considered. (III)

e. There shall be drawer space for each resident's clothing. In a multiple bedroom, drawer space shall be assigned each resident. (III)

f. Walls, ceilings, and floors shall have easily cleanable surfaces and shall be kept clean and in good repair. (III)

g. Beds and other furnishings shall not obstruct free passage to and through doorways. (III)

h. Clothing shall be hung in closets or wardrobes available in each room. (III)

i. Beds shall not be placed with the head of the bed in front of a window or radiator. (III)

j. Beds shall not be placed in such a manner that the side of the bed is against the radiator or in close proximity to it unless it is covered so as to protect the resident from contact with it or from excessive heat. (III)

k. Reading lamps shall be provided each resident in the resident's room. (III)

l. Each room shall have sufficient accessible mirrors to serve the resident's needs. Mirrors are not required if the room is located in a CCDI unit and the mirrors cause concern for the resident. (III)

m. Sturdy, adjustable overbed tables shall be provided for each resident who is unable to eat in the dining room. (III)

n. Each resident bedroom shall have a door. The door shall be the swing type and shall not swing into the corridor. (III)

58.35(5) Heating. A centralized heating system capable of maintaining a minimum temperature of 78°F (26°C) shall be provided. Portable units or space heaters are prohibited from being used in the facility except as permitted in the governing Life Safety Code or in an emergency. In the event of emergency use, the facility shall provide notice to the state fire marshal's office within 24 hours. (III)

58.35(6) Water supply.

a. Every facility shall have an adequate water supply from an approved source. A municipal source of supply shall be considered as meeting this requirement. (III)

b. Private sources of supply shall be tested annually and the report submitted with the annual application for license. (III)

c. A bacterially unsafe source of supply shall be grounds for denial, suspension, or revocation of license. (III)

d. The department may require testing of private sources of supply at its discretion in addition to the annual test. The facility shall supply reports of such tests as directed by the department. (III)

e. Hot and cold running water under pressure shall be available in the facility. (III)

f. Prior to construction of a new facility or new water source, private sources of supply shall be surveyed and shall comply with the requirements of the department of health. (III)

58.35(7) Nonambulatory residents.

a. All nonambulatory residents shall be housed on the grade level floor. (II, III)

b. These provisions in "a" above relating to nonambulatory residents are not applicable if the facility has a suitably sized elevator.

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.36(135C) Family and employee accommodations.

58.36(1) Children under 14 years of age shall not be allowed into the service areas. (III)

58.36(2) The residents' bedrooms shall not be occupied by employees or family members of the licensee. (III)

58.36(3) In facilities where the total occupancy of family, employees, and residents is five or less, one toilet and one tub or shower shall be the minimum requirement. (III)

58.36(4) In facilities where the total occupancy of family, employees, and residents is more than five, separate bathing and toilet facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

58.36(5) In all health care facilities, if the family or employees live within the facility, separate living quarters and recreation facilities shall be required for the family or employees distinct from such areas provided for residents. (III)

481—58.37(135C) Animals. Animals may be permitted within the facility with prior approval of the department and under controlled conditions. (III)

481—58.38(135C) Supplies.

58.38(1) Linen supplies.

a. There shall be an adequate supply of linen so that each resident shall have at least three washcloths, hand towels, and bath towels per week. (III)

b. A complete change of bed linens shall be available in the linen storage area for each bed. (III)

c. Sufficient lightweight, clean, serviceable blankets shall be available. All blankets shall be laundered as often as necessary for cleanliness and freedom from odors. (III)

d. Each bed shall be provided with clean, washable bedspreads. There shall be a supply available when changes are necessary. (III)

- e.* Uncrowded and convenient storage shall be provided for linens, pillows, and bedding. (III)
 - 58.38(2) First-aid kit.** A first-aid emergency kit shall be available on each floor in every facility. (II, III)
 - 58.38(3) Supplies and equipment for nursing services.**
 - a.* All nursing care equipment shall be properly sanitized or sterilized before use by another resident. (II)
 - b.* There shall be disposable or one-time use items available with provisions for proper disposal to prevent reuse except as allowed by generally accepted infection control standards. (I, II, III)
 - c.* Convenient, safe storage shall be provided for bath and toilet supplies, bathroom scales, mechanical lifts, and shower chairs. (III)
 - d.* Sanitary and protective storage shall be provided for all equipment and supplies. (III)
 - e.* All items that must be sterilized shall be autoclaved unless sterile disposable items are furnished which are promptly disposed of after a single use. (III)
 - f.* Supplies and equipment for nursing and personal care sufficient in quantities to meet the needs of the residents shall be provided. (III)
- [ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.39(135C) Residents' rights in general.

58.39(1) Each facility shall ensure that policies and procedures are written and implemented which include, at a minimum, all of the following provisions (subrules 58.39(2) to 58.39(6)) and which govern all areas of service provided by the facility. These policies and procedures shall be available to staff, residents, their families or legal representatives and the public and shall be reviewed annually. (II)

58.39(2) Policies and procedures shall address the admission and retention of persons with histories of dangerous or disturbing behavior. For the purposes of the subrule, persons with histories of dangerous or disturbing behavior are those persons who have been found to be seriously mentally impaired pursuant to Iowa Code section 229.13 within six months of the request for admission to the facility. In addition to establishing the criteria for admission and retention of persons so defined, the policies and procedures shall provide for:

- a.* Reasonable precautions to prevent the resident from harming self, other residents, or employees of the facility.
- b.* Treatment of persons with mental illness as defined in Iowa Code section 229.1(1) and which is provided in accordance with the individualized health care plan.
- c.* Ongoing and documented staff training on individualized health care planning for persons with mental illness.

58.39(3) Policies and procedures regarding the admission, transfer, and discharge of residents shall ensure that:

- a.* Only those persons are accepted whose needs can be met by the facility directly or in cooperation with community resources or other providers of care with which it is affiliated or has contracts. (II)
- b.* As changes occur in residents' physical or mental condition, necessitating services or care which cannot be adequately provided by the facility, they are transferred promptly to other appropriate facilities. (II)

58.39(4) Policies and procedures regarding the use of chemical and physical restraints shall define the use of said restraints and identify the individual who may authorize the application of physical restraints in emergencies, and describe the mechanism for monitoring and controlling their use. (II)

58.39(5) Policies and procedures shall include a method for submitting complaints and recommendations by residents or their responsible party and for ensuring a response and disposition by the facility. (II)

58.39(6) Policies and procedures shall include provisions governing access to, duplication of, and dissemination of information from the residents' records. (II)

58.39(7) Policies and procedures shall include a provision that each resident shall be fully informed of the resident's rights and responsibilities as a resident and of all rules governing resident conduct and

responsibilities. This information must be provided upon admission, or in the case of residents already in the facility, upon the facility's adoption or amendment of residents' rights policies. (II)

a. The facility shall make known to residents what they may expect from the facility and its staff, and what is expected from them. The facility shall communicate these expectations during the period of not more than two weeks before or five days after admission. The communication shall be in writing, e.g., in a separate handout or brochure describing the facility, and interpreted verbally, e.g., as part of a preadmission interview, resident counseling, or in individual or group orientation sessions following admission. (II)

b. Residents' rights and responsibilities shall be presented in language understandable to the resident. If the facility serves residents who are non-English speaking or deaf or hard of hearing, steps shall be taken to translate the information into a foreign or sign language. In the case of blind residents, either Braille or a recording shall be provided. Residents shall be encouraged to ask questions about their rights and responsibilities and these questions shall be answered. (II)

c. A statement shall be signed by the resident, or the resident's responsible party, indicating an understanding of these rights and responsibilities, and shall be maintained in the record. The statement shall be signed no later than five days after admission, and a copy of the signed statement shall be given to the resident or responsible party, if applicable. In the case of an intellectually disabled resident, the signature shall be witnessed by a person not associated with or employed by the facility. The witness may be a parent, guardian, Medicaid agency representative, etc. (II)

d. In order to ensure that residents continue to be aware of these rights and responsibilities during their stay, a written copy shall be prominently posted in a location that is available to all residents. (II)

e. All residents shall be advised within 30 days following changes made in the statement of residents' rights and responsibilities. Appropriate means shall be utilized to inform non-English speaking, deaf or hard-of-hearing, or blind residents of such changes. (II)

58.39(8) Each resident or responsible party shall be fully informed in a contract as required in rule 481—58.13(135C), prior to or at the time of admission and during the resident's stay, of services available in the facility, and of related charges including any charges for services not covered under the Title XIX program or not covered by the facility's basic per diem rate. (II)

58.39(9) Each resident or responsible party shall be fully informed by a physician of the resident's health and medical condition unless medically contraindicated (as documented by a physician in the resident's record). Each resident shall be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, which may include, but is not limited to, nursing care, nutritional care, rehabilitation, restorative therapies, activities, and social work services. Each resident only participates in experimental research conducted under the U.S. Department of Health and Human Services' protection from research risks policy and then only upon the resident's informed written consent. Each resident has the right to refuse treatment except as provided by Iowa Code chapter 229. In the case of a confused or intellectually disabled individual, the responsible party shall be informed by the physician of the resident's medical condition and be afforded the opportunity to participate in the planning of the resident's total care and medical treatment, to be informed of the medical condition, and to refuse to participate in experimental research. (II)

a. The requirement that residents shall be informed of their conditions, involved in the planning of their care, and advised of any significant changes in either shall be communicated to every physician responsible for the medical care of residents in the facility. (II)

b. The administrator or designee shall be responsible for working with attending physicians in the implementation of this requirement. (II)

c. If the physician determines or in the case of a confused or intellectually disabled resident the responsible party determines that informing the resident of the resident's condition is contraindicated, this decision and reasons for it shall be documented in the resident's record by the physician. (II)

d. The resident's plan of care shall be based, in part, on the physician's orders. It shall be developed upon admission by appropriate facility staff and shall include participation by the resident if capable. Residents shall be advised of alternative courses of care and treatment and their consequences when

such alternatives are available. The resident's preference about alternatives shall be elicited and honored if feasible.

e. Any clinical investigation involving residents must be under the sponsorship of an institution with a human subjects review board functioning in accordance with the requirements of 45 CFR 46. A resident being considered for participation in experimental research must be fully informed of the nature of the experiment, e.g., medication, treatment, and understand the possible consequences of participating or not participating. The resident's (or responsible party's) written informed consent must be received prior to participation. (II)

This rule is intended to implement Iowa Code section 135C.23(2).

[ARC 0766C, IAB 5/29/13, effective 7/3/13; ARC 5711C, IAB 6/16/21, effective 7/21/21; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.40(135C) Involuntary discharge or transfer.

58.40(1) *Involuntary discharge or transfer permitted.* A facility may involuntarily discharge or transfer a resident for only one of the following reasons:

- a.* Medical reasons;
- b.* The resident's welfare or that of other residents;
- c.* Nonpayment for the resident's stay, as described in the contract for the resident's stay;
- d.* Due to action pursuant to Iowa Code chapter 229;
- e.* By reason of negative action by the Iowa department of human services; or
- f.* By reason of negative action by the quality improvement organization (QIO). (I, II, III)

58.40(2) *Medical reasons.* Medical reasons for transfer or discharge shall be based on the resident's needs and shall be determined and documented in the resident's record by the primary care provider. Transfer or discharge may be required in order to provide a different level of care to the resident. (II)

58.40(3) *Welfare of a resident.* Welfare of a resident or that of other residents refers to a resident's social, emotional, or physical well-being. A resident may be transferred or discharged because the resident's behavior poses a continuing threat to the resident (e.g., suicidal) or to the well-being of other residents or staff (e.g., the resident's behavior is incompatible with other residents' needs and rights). Written documentation that the resident's continued presence in the facility would adversely affect the resident's own welfare or that of other residents shall be made by the administrator or designee and shall include specific information to support this determination. (II)

58.40(4) *Involuntary discharge or transfer prohibited—payment source.* A resident shall not be transferred or discharged solely because the cost of the resident's care is being paid under Iowa Code chapter 249A or because the resident's source of payment is changing from private support to payment under Iowa Code chapter 249A. (I, II)

58.40(5) *Notice.* Involuntary transfer or discharge of a resident from a facility shall be preceded by a written notice to the resident and the responsible party. (II, III)

- a.* The notice shall contain all of the following information:
 - (1) The stated reason for the proposed transfer or discharge. (II)
 - (2) The effective date of the proposed transfer or discharge. (II)
 - (3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request and you will not be transferred before a final decision is rendered. Extension of the 14-day requirement may be permitted in emergency circumstances upon request to the department's designee. If you lose the hearing,

you will not be transferred before the expiration of either (1) 30 days following your receipt of the original notice of the discharge or transfer, or (2) 5 days following final decision of such hearing, including the exhaustion of all appeals, whichever occurs later. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's primary care provider; the person or agency responsible for the resident's placement, maintenance, and care in the facility; and the department on aging's office of the long-term care ombudsman. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. The notice required by paragraph 58.40(5) "a" shall be provided at least 30 days in advance of the proposed transfer or discharge unless one of the following occurs:

(1) An emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the primary care provider. Emergency transfers or discharges may also be mandated in order to protect the health, safety, or well-being of other residents and staff from the resident being transferred. (II)

(2) The transfer or discharge is subsequently agreed to by the resident or the resident's responsible party, and notification is given to the responsible party, the resident's primary care provider, and the person or agency responsible for the resident's placement, maintenance, and care in the facility.

(3) The discharge or transfer is the result of a final, nonappealable decision by the department of human services or the QIO.

d. A hearing requested pursuant to this subrule shall be held in accordance with subrule 58.40(7).

58.40(6) *Emergency transfer or discharge.* In the case of an emergency transfer or discharge, the resident must be given a written notice prior to or within 48 hours following the transfer or discharge. (II, III)

a. A copy of this notice shall be placed in the resident's file. The notice shall contain all of the following information:

(1) The stated reason for the transfer or discharge. (II)

(2) The effective date of the transfer or discharge. (II)

(3) A statement, in not less than 12-point type, that reads as follows: (II)

You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing, in writing or verbally, with the Iowa department of inspections and appeals (hereinafter referred to as "department") within 7 days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held no later than 14 days after the department's receipt of your request. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, call the department at (515)281-4115, or write to the department to the attention of: Administrator, Division of Health Facilities, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

b. The notice shall be personally delivered to the resident and a copy placed in the resident's record. A copy shall also be transmitted to the department; the resident's responsible party; the resident's primary care provider; the person or agency responsible for the resident's placement, maintenance, and care in the facility; and the department on aging's office of the long-term care ombudsman. The notice shall indicate that copies have been transmitted to the required parties by using the abbreviation "cc:" and listing the names of all parties to whom copies were sent.

c. A hearing requested pursuant to this subrule shall be held in accordance with subrule 58.40(7).

58.40(7) Hearing.

a. Request for hearing.

(1) The resident must request a hearing within 7 days of receipt of the written notice.

(2) The request must be made to the department, either in writing or verbally.

b. The hearing shall be held no later than 14 days after the department's receipt of the request unless either party requests an extension due to emergency circumstances.

c. Except in the case of an emergency discharge or transfer, a request for a hearing shall stay a transfer or discharge pending a final decision, including the exhaustion of all appeals. (II)

d. The hearing shall be heard by a department of inspections and appeals administrative law judge pursuant to Iowa Code chapter 17A and 481—Chapter 9. The hearing shall be public unless the resident or resident's legal representative requests in writing that the hearing be closed. In a determination as to whether a transfer or discharge is authorized, the burden of proof by a preponderance of the evidence rests on the party requesting the transfer or discharge.

e. Notice of the date, time, and place of the hearing shall be sent by certified mail or delivered in person to the facility, the resident, the responsible party, and the office of the long-term care ombudsman not later than 5 full business days after the department's receipt of the request. The notice shall also inform the facility and the resident or the responsible party that they have a right to appear at the hearing in person or be represented by an attorney or other individual. The appeal shall be dismissed if neither party is present or represented at the hearing. If only one party appears or is represented, the hearing shall proceed with one party present. The office of the long-term care ombudsman shall have the right to appear at the hearing.

f. The administrative law judge's written decision shall be mailed by certified mail to the facility, resident, responsible party, and the office of the long-term care ombudsman within 10 working days after the hearing has been concluded.

g. If the basis for an involuntary transfer or discharge is the result of a negative action by the Iowa department of human services or the QIO, an appeal shall be filed with those agencies as appropriate. Continued payment shall be consistent with rules of those agencies.

58.40(8) Nonpayment. If nonpayment is the basis for involuntary transfer or discharge, the resident shall have the right to make full payment up to the date that the discharge or transfer is to be made and then shall have the right to remain in the facility. (II)

58.40(9) Discussion of involuntary transfer or discharge. Within 48 hours after notice of involuntary transfer or discharge has been received by the resident, the facility shall discuss the involuntary transfer or discharge with the resident, the resident's responsible party, and the person or agency responsible for the resident's placement, maintenance, and care in the facility. (II)

a. The facility administrator or other appropriate facility representative serving as the administrator's designee shall provide an explanation and discussion of the reasons for the resident's involuntary transfer or discharge. (II)

b. The content of the explanation and discussion shall be summarized in writing, shall include the names of the individuals involved in the discussion, and shall be made part of the resident's record. (II)

c. The provisions of this subrule do not apply if the involuntary transfer or discharge has already occurred pursuant to subrule 58.40(6) and emergency notice is provided within 48 hours.

58.40(10) Transfer or discharge planning.

a. The facility shall develop a plan to provide for the orderly and safe transfer or discharge of each resident to be transferred or discharged. (II)

b. To minimize the possible adverse effects of the involuntary transfer, the resident shall receive counseling services by the sending facility before the involuntary transfer and by the receiving facility after the involuntary transfer. Counseling shall be documented in the resident's record. (II)

c. The counseling requirement in paragraph 58.40(10) "b" does not apply if the discharge has already occurred pursuant to subrule 58.40(6) and emergency notice is provided within 48 hours.

d. Counseling, if required, shall be provided by a licensed mental health professional as defined in Iowa Code section 228.1(6). (II)

e. The health care facility that receives a resident who has been involuntarily transferred shall immediately formulate and implement a plan of care which takes into account possible adverse effects the transfer may cause. (II)

58.40(11) *Transfer upon revocation of license or voluntary closure.* Residents shall not have the right to a hearing to contest an involuntary discharge or transfer resulting from the revocation of the facility's license by the department of inspections and appeals. In the case of the voluntary closure of a facility, a period of 60 days must be allowed for an orderly transfer of residents to other facilities.

58.40(12) *Intrafacility transfer.*

a. Residents shall not be arbitrarily relocated from room to room within a licensed health care facility. (I, II) Involuntary relocation may occur only in the following situations, which shall be documented in the resident's record: (II)

- (1) Resident's incompatibility with or disturbance to other roommates.
- (2) For the welfare of the resident or other residents of the facility.
- (3) For medical, nursing or psychosocial reasons, as judged by the primary care provider, nurse or social worker in the case of a facility which groups residents by medical, nursing or psychosocial needs.
- (4) To allow a new admission to the facility that would otherwise not be possible due to separation of roommates by sex.

(5) In the case of a resident whose source of payment was previously private, but who now is eligible for Title XIX (Medicaid) assistance, the resident may be transferred from a private room to a semiprivate room or from one semiprivate room to another.

(6) Reasonable and necessary administrative decisions regarding the use and functioning of the building.

b. Unreasonable and unjustified reasons for changing a resident's room without the concurrence of the resident or responsible party include:

- (1) Change from private pay status to Title XIX, except as outlined in subparagraph 58.40(12) "a"(5). (II)
- (2) As punishment or behavior modification, except as specified in subparagraph 58.40(12) "a"(1). (II)
- (3) Discrimination on the basis of race or religion. (II)

c. If intrafacility relocation is necessary for reasons outlined in paragraph 58.40(12) "a," the resident shall be notified at least 48 hours prior to the transfer and the reason therefor shall be explained. The responsible party shall be notified as soon as possible. The notification shall be documented in the resident's record and signed by the resident or responsible party. (II)

d. If emergency relocation is required in order to protect the safety or health of the resident or other residents, the notification requirements may be waived. The conditions of the emergency shall be documented. The family or responsible party shall be notified immediately or as soon as possible of the condition that necessitates emergency relocation, and such notification shall be documented. (II)

e. A transfer to a part of a facility that has a different license must be handled the same way as a transfer to another facility and not as an intrafacility transfer. (II, III)

[ARC 1752C, IAB 12/10/14, effective 1/14/15; ARC 3523C, IAB 12/20/17, effective 1/24/18; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.41(135C) Residents' rights. Each resident shall be encouraged and assisted throughout the resident's period of stay, to exercise rights as a resident and as a citizen and may voice grievances and recommend changes in policies and services to administrative staff or to outside representatives of the resident's choice, free from interference, coercion, discrimination, or reprisal. (II)

58.41(1) The facility shall provide ongoing opportunities for residents to be aware of and to exercise their rights as residents. Residents shall be kept informed of issues or pending decisions of the facility that affect them and their views shall be solicited prior to action. (II)

58.41(2) The facility shall implement a written procedure for registering and resolving grievances and recommendations by residents or their responsible party. The procedure shall ensure protection of the resident from any form of reprisal or intimidation. The written procedure shall include:

- a. Designation of an employee responsible for handling grievances and recommendations. (II)
- b. A method of investigating and assessing the validity of a grievance or recommendation. (II)
- c. Methods of resolving grievances. (II)
- d. Methods of recording grievances and actions taken. (II)

58.41(3) The facility shall post in a prominent area the name, telephone number, and address of the ombudsman, survey agency, local law enforcement agency, and certified volunteer long-term care ombudsman and the text of Iowa Code section 135C.46 to provide to residents a further course of redress. (II)

[ARC 1205C, IAB 12/11/13, effective 1/15/14]

481—58.42(135C) Financial affairs—management. Each resident who has not been assigned a guardian or conservator by the court may manage the resident's own personal financial affairs, and to the extent, under written authorization by the resident that the facility assists in management, the management shall be carried out in accordance with Iowa Code section 135C.24. (II)

58.42(1) The facility shall maintain a written account of all residents' funds received by or deposited with the facility. (II)

58.42(2) An employee shall be designated in writing to be responsible for resident accounts. (II)

58.42(3) The facility shall keep on deposit personal funds over which the resident has control in accordance with Iowa Code section 135C.24(2). Should the resident request these funds, they shall be given to the resident on request with receipts maintained by the facility and a copy to the resident. In the case of a confused or intellectually disabled resident, the resident's responsible party shall designate a method of disbursing the resident's funds. (II)

58.42(4) If the facility makes financial transactions on a resident's behalf, the resident must receive or acknowledge that the resident has seen an itemized accounting of disbursements and current balances at least quarterly. A copy of this statement shall be maintained in the resident's financial or business record. (II)

58.42(5) A resident's personal funds shall not be used without the written consent of the resident or the resident's guardian. (II)

58.42(6) A resident's personal funds shall be returned to the resident when the funds have been used without the written consent of the resident or the resident's guardian. The department may report findings that resident funds have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

[ARC 0766C, IAB 5/29/13, effective 7/3/13]

481—58.43(135C) Resident abuse prohibited. Each resident shall receive kind and considerate care at all times and shall be free from mental, physical, sexual, and verbal abuse, exploitation, neglect, and physical injury. Each resident shall be free from chemical and physical restraints except as follows: when authorized in writing by a physician for a specified period of time; when necessary in an emergency to protect the resident from injury to the resident or to others, in which case restraints may be authorized by designated professional personnel who promptly report the action taken to the physician; and in the case of an intellectually disabled individual when ordered in writing by a physician and authorized by a designated qualified intellectual disabilities professional for use during behavior modification sessions. Mechanical supports used in normative situations to achieve proper body position and balance shall not be considered to be a restraint. (II)

58.43(1) Mental abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation. (II)

58.43(2) Physical abuse includes, but is not limited to, corporal punishment and the use of restraints as punishment. (II)

58.43(3) Drugs such as tranquilizers may not be used as chemical restraints to limit or control resident behavior for the convenience of staff. (II)

58.43(4) Physicians' orders are required to utilize all types of physical restraints and shall be renewed at least quarterly. (II) Physical restraints are defined as the following:

Type I—the equipment used to promote the safety of the individual but is not applied directly to their person. Examples: divided doors and totally enclosed cribs.

Type II—the application of a device to the body to promote safety of the individual. Examples: vest devices, soft-tie devices, hand socks, geriatric chairs.

Type III—the application of a device to any part of the body which will inhibit the movement of that part of the body only. Examples: wrist, ankle or leg restraints and waist straps.

58.43(5) Physical restraints are not to be used to limit resident mobility for the convenience of staff and must comply with life safety requirements. If a resident's behavior is such that it may result in injury to the resident or others and any form of physical restraint is utilized, it should be in conjunction with a treatment procedure(s) designed to modify the behavioral problems for which the resident is restrained, or as a last resort, after failure of attempted therapy. (I, II)

58.43(6) Each time a Type II or III restraint is used documentation on the nurse's progress record shall be made which includes type of restraint and reasons for the restraint and length of time resident was restrained. The documentation of the use of Type III restraint shall also include the time of position change. (II)

58.43(7) Each facility shall implement written policies and procedures governing the use of restraints which clearly delineate at least the following:

- a. Physicians' orders shall indicate the specific reasons for the use of restraints. (II)
- b. Their use is temporary and the resident will not be restrained for an indefinite amount of time. (I, II)
- c. A qualified nurse shall make the decision for the use of a Type II or Type III restraint for which there shall be a physician's order. (II)
- d. A resident placed in a Type II or III restraint shall be checked at least every 30 minutes by appropriately trained staff. No form of restraint shall be used or applied in such a manner as to cause injury or the potential for injury and provide a minimum of discomfort to resident restrained. (I, II)
- e. Reorders are issued only after the attending physician reviews the resident's condition. (II)
- f. Their use is not employed as punishment, for the convenience of the staff, or as a substitute for supervision or program. (I, II)
- g. The opportunity for motion and exercise shall be provided for a period of not less than ten minutes during each two hours in which Type II and Type III restraints are employed, except when resident is sleeping. However, when resident awakens, this shall be provided. This shall be documented each time. A check sheet may serve this purpose. (I, II)
- h. Locked restraints or leather restraints shall not be permitted except in life-threatening situations. Straight jackets and secluding residents behind locked doors shall not be employed. (I, II)
- i. Nursing assessment of the resident's need for continued application of a Type III restraint shall be made every 12 hours and documented on the nurse's progress record. Documentation shall include the type of restraint, reason for the restraint and the circumstances. Nursing assessment of the resident's need for continued application of either a Type I or Type II restraint and nursing evaluation of the resident's physical and mental condition shall be made every 30 days and documented on the nurse's progress record. (II)
- j. Divided doors shall be of the type that when the upper half is closed the lower section shall close. (II)
- k. Methods of restraint shall permit rapid removal of the resident in the event of fire or other emergency. (I, II)
- l. The facility shall provide orientation and ongoing education programs in the proper use of restraints.

58.43(8) In the case of an intellectually disabled individual who participates in a behavior modification program involving use of restraints or aversive stimuli, the program shall be conducted only with the informed consent of the individual's parent or responsible party. Where restraints are employed, an individualized program shall be developed by the interdisciplinary team with specific methodologies for monitoring its progress. (II)

a. The resident's responsible party shall receive a written account of the proposed plan of the use of restraints or aversive stimuli and have an opportunity to discuss the proposal with a representative(s) of the treatment team. (II)

b. The responsible party must consent in writing prior to the use of the procedure. Consent may also be withdrawn in writing. (II)

58.43(9) Allegations of dependent adult abuse. Allegations of dependent adult abuse shall be reported and investigated pursuant to Iowa Code chapter 235E and 481—Chapter 52. (I, II, III)

58.43(10) and **58.43(11)** Rescinded IAB 12/11/13, effective 1/15/14.

This rule is intended to implement Iowa Code sections 135C.14, 235B.3(1), and 235B.3(11).

[ARC 0766C, IAB 5/29/13, effective 7/3/13; ARC 1204C, IAB 12/11/13, effective 1/15/14; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.44(135C) Resident records. Each resident shall be ensured confidential treatment of all information contained in the resident's records, including information contained in an automatic data bank. The resident's written consent shall be required for the release of information to persons not otherwise authorized under law to receive it. (II)

58.44(1) The facility shall limit access to any medical records to staff and consultants providing professional service to the resident. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(2) Similar procedures shall safeguard the confidentiality of residents' personal records, e.g., financial records and social services records. Only those personnel concerned with the financial affairs of the residents may have access to the financial records. This is not meant to preclude access by representatives of state and federal regulatory agencies. (II)

58.44(3) The resident, or the resident's responsible party, shall be entitled to examine all information contained in the resident's record and shall have the right to secure full copies of the record at reasonable cost upon request. (II)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.45(135C) Dignity preserved. The resident shall be treated with consideration, respect, and full recognition of dignity and individuality, including privacy in treatment and in care for personal needs. (II)

58.45(1) Staff shall display respect for residents when speaking with, caring for, or talking about them, as constant affirmation of their individuality and dignity as human beings. (II)

58.45(2) Schedules of daily activities shall allow maximum flexibility for residents to exercise choice about what they will do and when they will do it. Residents' individual preferences regarding such things as menus, clothing, religious activities, friendships, activity programs, entertainment, sleeping and eating, also times to retire at night and arise in the morning shall be elicited and considered by the facility. (II)

58.45(3) Residents shall be examined and treated in a manner that maintains the privacy of their bodies. A closed door or a drawn curtain shall shield the resident from passersby. People not involved in the care of the residents shall not be present without the resident's consent while the resident is being examined or treated. (II)

58.45(4) Privacy of a resident's body also shall be maintained during toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance. (II)

58.45(5) Staff shall knock and be acknowledged before entering a resident's room unless the resident is not capable of a response. This shall not apply in emergency conditions. (II)

481—58.46(135C) Resident work. No resident may be required to perform services for the facility, except as provided by Iowa Code sections 35D.14 and 347B.5. Residents may perform services for the facility if such services are performed in accordance with 42 CFR 483.10(f)(9). (II)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.47(135C) Communications. Each resident may communicate, associate, and meet privately with persons of the resident's choice, unless to do so would infringe upon the rights of other residents, and may send and receive personal mail unopened. (II)

58.47(1) Residents shall be permitted to receive visitors in accordance with 42 CFR 483.10(f)(4) and the federal interpretive guidelines. A particular visitor may be restricted by the facility if the visitor's behavior is unreasonably disruptive to the functioning of the facility (this judgment must be made by the administrator and the reasons shall be documented and kept on file). (II)

58.47(2) Decisions to restrict a visitor are reviewed and reevaluated: each time the medical orders are reviewed by the physician, at least quarterly by the facility's staff, or at the resident's request. (II)

58.47(3) Space shall be provided for residents to receive visitors in reasonable comfort and privacy. (II)

58.47(4) Telephones shall be available and accessible for residents to make and receive calls with privacy in accordance with 42 CFR 483.10(g)(6) and (7). Residents who need help shall be assisted in using the telephone. (II)

58.47(5) Arrangements shall be made to provide assistance to residents who require help in reading or sending mail. (II)

58.47(6) Residents shall be permitted to leave the facility and environs at reasonable times unless there are justifiable reasons established in writing by the attending physician, qualified intellectual disabilities professional or facility administrator for refusing permission. (II)

58.47(7) Residents shall not have their personal lives regulated beyond reasonable adherence to meal schedules, bedtime hours, and other written policies which may be necessary for the orderly management of the facility and as required by these rules. However, residents shall be encouraged to participate in recreational programs. (II)

[ARC 0766C, IAB 5/29/13, effective 7/3/13; ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.48(135C) Resident activities. Each resident may participate in activities of social, religious, and community groups at the resident's discretion unless contraindicated for reasons documented by the attending physician or qualified intellectual disabilities professional as appropriate in the resident's record. (II)

58.48(1) Residents who wish to meet with or participate in activities of social, religious, or other community groups in or outside of the facility shall be informed, encouraged, and assisted to do so. (II)

58.48(2) All residents shall have the freedom to refuse to participate in these activities. (II)

[ARC 0766C, IAB 5/29/13, effective 7/3/13]

481—58.49(135C) Resident property. Each resident may retain and use personal clothing and possessions as space permits and provided such use is not otherwise prohibited by these rules. (II)

58.49(1) Residents shall be permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility. The personal property shall be kept in a safe location which is convenient to the resident. (II)

58.49(2) Any personal clothing or possessions retained by the facility for the resident during the resident's stay shall be identified and recorded on admission and a record placed on the resident's chart. The facility shall be responsible for secure storage of the items, and they shall be returned to the resident promptly upon request or upon discharge from the facility. (II)

58.49(3) A resident's personal property shall not be used without the written consent of the resident or the resident's guardian. (II)

58.49(4) A resident's personal property shall be returned to the resident when it has been used without the written consent of the resident or the resident's guardian. The department may report findings that a resident's property has been used without written consent to the local law enforcement agency, as appropriate. (II)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.50(135C) Family visits. Each resident, if married, shall be ensured privacy for visits by the resident's spouse; if both are residents in the facility, they shall be permitted to share a room if available. (II)

58.50(1) The facility shall provide for needed privacy in visits between spouses. (II)

58.50(2) Spouses who are residents in the same facility shall be permitted to share a room, if available. (II)

58.50(3) Family members shall be permitted to share a room, if available, if requested by both parties. (II)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.51(135C) Choice of physician and pharmacy. Each resident shall be permitted free choice of a physician. Each resident shall have the right to choose the resident's Medicare prescription drug benefit plan (Part D) pursuant to Section 1860D of the Social Security Act, and the facility shall utilize a pharmacy(ies) that recognizes the Part D plans chosen by that facility's Medicare beneficiaries. Each resident shall have free choice of pharmacy as to medications purchased by the resident outside of Part D plan coverage, although the facility may require the pharmacy selected to utilize a drug distribution system compatible with the system currently used by the facility.

A facility shall not require the repackaging of medications dispensed by the Veterans Administration or an institution operated by the Veterans Administration for the purpose of making the drug distribution system compatible with the system used by the facility. (II)

[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.52(135C) Incompetent resident.

58.52(1) Each facility shall provide that all rights and responsibilities of the resident devolve to the resident's responsible party when a resident is adjudicated incompetent in accordance with state law or, in the case of a resident who has not been adjudicated incompetent under the laws of the state, in accordance with 42 CFR 483.10. This subrule is not intended to limit the authority of any individual acting pursuant to Iowa Code chapter 144A. (II)

58.52(2) The fact that a resident has been adjudicated incompetent does not absolve the facility from advising the resident of these rights to the extent the resident is able to understand them. The facility shall also advise the responsible party, if any, and acquire a statement indicating an understanding of residents' rights. (II)

481—58.53(135C) County care facilities. Rescinded ARC 7033C, IAB 5/31/23, effective 7/5/23.

481—58.54(135C) Special unit or facility dedicated to the care of persons with chronic confusion or a dementing illness (CCDI unit or facility).

58.54(1) A nursing facility which chooses to care for residents in a distinct part shall obtain a license for a CCDI unit or facility. In the case of a distinct part, this license will be in addition to its nursing facility license. The license shall state the number of beds in the unit or facility. (III)

a. Application for this category of care shall be submitted on a form provided by the department. (III)

b. Plans to modify the physical environment shall be submitted to the department. The plans shall be reviewed based on the requirements of 481—Chapter 61. (III)

58.54(2) A statement of philosophy shall be developed for each unit or facility which states the beliefs upon which decisions will be made regarding the CCDI unit or facility. Objectives shall be developed for each CCDI unit or facility as a whole. The objectives shall be stated in terms of expected results. (II, III)

58.54(3) A résumé of the program of care shall be submitted to the department for approval at least 60 days before a separate CCDI unit or facility is opened. A new résumé of the program of care shall be submitted when services are substantially changed. (II, III)

The résumé of the program of care shall:

a. Describe the population to be served; (II, III)

- b.* State philosophy and objectives; (II, III)
- c.* List admission and discharge criteria; (II, III)
- d.* Include a copy of the floor plan; (II, III)
- e.* List the titles of policies and procedures developed for the unit or facility; (II, III)
- f.* Propose a staffing pattern; (II, III)
- g.* Set out a plan for specialized staff training; (II, III)
- h.* State visitor, volunteer, and safety policies; (II, III)
- i.* Describe programs for activities, social services and families; (II, III) and
- j.* Describe the interdisciplinary care planning team. (II, III)

58.54(4) Separate written policies and procedures shall be implemented in each CCDI unit or facility. There shall be:

a. Admission and discharge policies and procedures which state the criteria to be used to admit residents and the evaluation process which will be used. These policies shall require a statement from the attending physician agreeing to the placement before a resident can be moved into a CCDI unit or facility. (II, III)

b. Safety policies and procedures which state the actions to be taken by staff in the event of a fire, natural disaster, emergency medical or catastrophic event. Safety procedures shall also explain steps to be taken when a resident is discovered to be missing from the unit or facility and when hazardous cleaning materials or potentially dangerous mechanical equipment is being used in the unit or facility. The facility shall identify its method for security of the unit or facility and the manner in which the effectiveness of the security system will be monitored. (II, III)

c. Program and service policies and procedures which explain programs and services offered in the unit or facility including the rationale. (III)

d. Policies and procedures concerning staff which state minimum numbers, types and qualifications of staff in the unit or facility. (II, III)

e. Policies about visiting which suggest times and ensure the residents' rights to free access to visitors. (II, III)

f. Quality assurance policies and procedures which list the process and criteria which will be used to monitor and to respond to risks specific to the residents. This shall include, but not be limited to, drug use, restraint use, infections, incidents and acute behavioral events. (II, III)

58.54(5) Preadmission assessment of physical, mental, social and behavioral status shall be completed to determine whether the applicant meets admission criteria. This assessment shall be completed by a registered nurse and a staff social worker or social work consultant and shall become part of the permanent record upon admission of the resident. (II, III)

58.54(6) All staff working in a CCDI unit or facility shall have training appropriate to the needs of the residents. (II, III)

a. Upon assignment to the unit or facility, everyone working in the unit or facility shall be oriented to the needs of people with chronic confusion or dementing illnesses. They shall have special training appropriate to their job description within 30 days of assignment to the unit or facility. (II, III) The orientation shall be at least six hours. The following topics shall be covered:

- (1) Explanation of the disease or disorder; (II, III)
- (2) Symptoms and behaviors of memory-impaired people; (II, III)
- (3) Progression of the disease; (II, III)
- (4) Communication with CCDI residents; (II, III)
- (5) Adjustment to care facility residency by the CCDI unit or facility residents and their families; (II, III)
- (6) Inappropriate and problem behavior of CCDI unit or facility residents and how to deal with it; (II, III)
- (7) Activities of daily living for CCDI residents; (II, III)
- (8) Handling combative behavior; (II, III) and
- (9) Stress reduction for staff and residents. (II, III)

b. Licensed nurses, certified aides, certified medication aides, social services personnel, housekeeping and activity personnel shall have a minimum of six hours of in-service training annually. This training shall be related to the needs of CCDI residents. The six-hour training shall count toward the required annual in-service training. (II, III)

58.54(7) There shall be at least one nursing staff person on a CCDI unit at all times. (I, II, III)

58.54(8) The CCDI unit or facility license may be revoked, suspended or denied pursuant to Iowa Code chapter 135C and Iowa Administrative Code 481—Chapter 50.
[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.55(135C) Another business or activity in a facility. A facility is allowed to have another business or activity in a health care facility or in the physical structure of the facility, if the other business or activity meets the requirements of applicable state and federal laws, administrative rules, and federal regulations.

To obtain the approval of the department and the state fire marshal, the facility must submit to the department a written request for approval which identifies the service(s) to be offered by the business and addresses the factors outlined in paragraphs “*a*” through “*f*” of subrule 58.55(1). (I, II, III)

58.55(1) The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

- a.* Health and safety risks for residents;
- b.* Noise created by the proposed business or activity;
- c.* Odors created by the proposed business or activity;
- d.* Use of the facility’s corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;
- e.* Proposed staffing for the business or activity; and
- f.* Sharing of services and staff between the proposed business or activity and the facility.

58.55(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

58.55(3) A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 61. (I, II, III)

481—58.56(135C) Respite care services. Respite care services means an organized program of temporary supportive care provided for 24 hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person. A nursing facility which chooses to provide respite care services must meet the following requirements related to respite services and must be licensed as a nursing facility.

58.56(1) A nursing facility certified as a Medicaid nursing facility or Medicare skilled nursing facility must meet all Medicaid and Medicare requirements including 42 CFR 483.15, admission, transfer and discharge rights.

58.56(2) A nursing facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

58.56(3) Rule 481—58.40(135C) regarding involuntary discharge or transfer rights, does not apply to residents who are being cared for under a respite care contract.

58.56(4) Pursuant to rule 481—58.13(135C), the facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident will be considered to be receiving respite care services. At the end of that period, the contract may be amended to extend that period of time. The contract shall specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements under 481—58.13(135C), except the requirements under subrule 58.13(7).

58.56(5) Respite care services shall not be provided by a health care facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.
[ARC 7033C, IAB 5/31/23, effective 7/5/23]

481—58.57(135C) Training of inspectors.

58.57(1) Subject to the availability of funding, all nursing facility inspectors shall receive 12 hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects.

58.57(2) An inspector shall not be personally liable for financing the training required under subrule 58.57(1).

58.57(3) The department shall consult with the collective bargaining representative of the inspector in regard to the training required under this rule.
[ARC 8433B, IAB 12/30/09, effective 2/3/10]

These rules are intended to implement Iowa Code sections 10A.402, 135C.6(1), 135C.14, 135C.32, 135C.36 and 227.4.

- [Filed 8/6/76, Notice 4/19/76—published 8/23/76, effective 9/27/76]
- [Filed without Notice 10/4/76—published 10/20/76, effective 11/24/76]
- [Filed emergency 12/21/76—published 1/12/77, effective 1/12/77]
- [Filed without Notice 2/4/77—published 2/23/77, effective 3/30/77]
- [Filed 8/18/77, Notice 3/9/77—published 9/7/77, effective 10/13/77]
- [Filed emergency 9/30/77—published 10/19/77, effective 9/30/77]
- [Filed without Notice 10/14/77—published 11/2/77, effective 12/8/77]
- [Filed 1/20/78, Notice 12/14/77—published 2/8/78, effective 3/15/78]
- [Filed 5/26/78, Notice 3/8/78—published 6/14/78, effective 7/19/78]
- [Filed 7/7/78, Notice 5/31/78—published 7/26/78, effective 9/1/78]
- [Filed 10/13/78, Notice 9/6/78—published 11/1/78, effective 12/7/78]
- [Filed 11/9/78, Notice 6/28/78—published 11/29/78, effective 1/3/79]
- [Filed emergency 11/22/78—published 12/13/78, effective 1/3/79]
- [Filed 5/20/82, Notice 12/23/81—published 6/9/82, effective 7/14/82]
- [Filed without Notice 7/16/82—published 8/4/82, effective 9/8/82]
- [Filed 3/11/83, Notice 1/5/83—published 3/30/83, effective 5/4/83]
- [Filed 1/10/86, Notice 11/6/85—published 1/29/86, effective 3/5/86]¹
- [Filed 5/16/86, Notice 1/1/86—published 6/4/86, effective 7/9/86]
- [Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]²
- [Filed 6/27/86, Notice 3/26/86—published 7/16/86, effective 8/20/86]
- [Filed emergency 9/19/86—published 10/8/86, effective 9/19/86]
- [Filed 2/6/87, Notice 10/22/86—published 2/25/87, effective 4/1/87]
- [Filed 2/6/87, Notice 11/5/86—published 2/25/87, effective 4/1/87]
- [Filed 3/12/87, Notice 1/28/87—published 4/8/87, effective 5/13/87]
- [Filed emergency 6/25/87—published 7/15/87, effective 7/1/87]
- [Filed 10/26/87, Notice 8/26/87—published 11/18/87, effective 12/23/87]
- [Filed 2/5/88, Notice 10/7/87—published 2/24/88, effective 3/30/88][◇]
- [Filed 4/28/88, Notice 12/16/87—published 5/18/88, effective 6/22/88]
- [Filed 5/26/88, Notice 4/20/88—published 6/15/88, effective 7/20/88]
- [Filed 9/30/88, Notice 8/24/88—published 10/19/88, effective 11/23/88][◇]
- [Filed 1/5/89, Notice 10/5/88—published 1/25/89, effective 3/1/89]
- [Filed 6/23/89, Notice 5/17/89—published 7/12/89, effective 8/16/89]
- [Filed 7/20/89, Notice 6/14/89—published 8/9/89, effective 9/13/89]
- [Filed 8/16/89, Notices 4/19/89, 7/12/89—published 9/6/89, effective 10/11/89]
- [Filed emergency 5/11/90—published 5/30/90, effective 5/11/90]
- [Filed 3/14/91, Notice 9/19/90—published 4/3/91, effective 5/8/91]
- [Filed emergency 5/10/91—published 5/29/91, effective 5/10/91]

[Filed emergency 7/17/91—published 8/7/91, effective 7/19/91]
 [Filed 1/31/92, Notice 11/13/91—published 2/19/92, effective 7/1/92]
 [Filed 3/12/92, Notice 12/11/91—published 4/1/92, effective 5/6/92]
 [Filed 1/15/93, Notice 11/25/92—published 2/3/93, effective 3/10/93]
 [Filed 3/11/94, Notice 9/15/93—published 3/30/94, effective 5/4/94]
 [Filed 5/16/95, Notice 3/15/95—published 6/7/95, effective 7/12/95]
 [Filed 7/11/97, Notice 4/23/97—published 7/30/97, effective 9/3/97]
 [Filed emergency 7/25/97—published 8/13/97, effective 7/25/97]
 [Filed emergency 11/14/97—published 12/3/97, effective 11/14/97]
 [Filed 11/14/97, Notice 8/13/97—published 12/3/97, effective 1/7/98]
 [Filed 3/31/98, Notice 12/3/97—published 4/22/98, effective 5/27/98]
 [Filed 7/9/98, Notice 4/22/98—published 7/29/98, effective 9/2/98]
 [Filed 1/21/99, Notice 10/7/98—published 2/10/99, effective 3/17/99]
 [Filed 11/12/99, Notice 10/6/99—published 12/1/99, effective 1/5/00]
 [Filed 7/17/03, Notice 6/11/03—published 8/6/03, effective 9/10/03]
 [Filed 1/15/04, Notice 10/1/03—published 2/4/04, effective 3/10/04]
 [Filed 1/15/04, Notice 12/10/03—published 2/4/04, effective 3/10/04]
 [Filed 3/12/04, Notice 1/7/04—published 3/31/04, effective 5/5/04]
 [Filed 3/12/04, Notice 2/4/04—published 3/31/04, effective 5/5/04]
 [Filed 9/9/04, Notice 8/4/04—published 9/29/04, effective 11/3/04]
 [Filed 7/13/05, Notice 6/8/05—published 8/3/05, effective 9/7/05]
 [Filed 9/20/06, Notice 8/2/06—published 10/11/06, effective 11/15/06]
 [Filed 11/15/06, Notice 10/11/06—published 12/6/06, effective 1/10/07][◇]
 [Filed 7/9/08, Notice 1/30/08—published 7/30/08, effective 9/3/08]
 [Filed ARC 8433B (Notice ARC 8190B, IAB 10/7/09), IAB 12/30/09, effective 2/3/10]
 [Filed ARC 0663C (Notice ARC 0513C, IAB 12/12/12), IAB 4/3/13, effective 5/8/13]
 [Filed ARC 0766C (Notice ARC 0601C, IAB 2/6/13), IAB 5/29/13, effective 7/3/13]
 [Filed ARC 0903C (Notice ARC 0776C, IAB 5/29/13), IAB 8/7/13, effective 9/11/13]
 [Filed ARC 1048C (Notice ARC 0923C, IAB 8/7/13), IAB 10/2/13, effective 11/6/13]
 [Filed ARC 1050C (Notice ARC 0907C, IAB 8/7/13), IAB 10/2/13, effective 11/6/13]
 [Filed ARC 1205C (Notice ARC 1082C, IAB 10/2/13), IAB 12/11/13, effective 1/15/14]
 [Filed ARC 1204C (Notice ARC 1083C, IAB 10/2/13), IAB 12/11/13, effective 1/15/14]
 [Filed ARC 1398C (Notice ARC 1313C, IAB 2/5/14), IAB 4/2/14, effective 5/7/14]
 [Filed ARC 1752C (Notice ARC 1648C, IAB 10/1/14), IAB 12/10/14, effective 1/14/15]
 [Editorial change: IAC Supplement 1/21/15]
 [Filed ARC 2020C (Notice ARC 1938C, IAB 4/1/15), IAB 6/10/15, effective 7/15/15]
 [Filed ARC 2560C (Notice ARC 2303C, IAB 12/9/15), IAB 6/8/16, effective 7/13/16]
 [Filed ARC 3523C (Notice ARC 3407C, IAB 10/25/17), IAB 12/20/17, effective 1/24/18]
 [Filed ARC 5421C (Notice ARC 5335C, IAB 12/16/20), IAB 2/10/21, effective 3/17/21]
 [Filed ARC 5711C (Notice ARC 5567C, IAB 4/21/21), IAB 6/16/21, effective 7/21/21]
 [Filed ARC 5719C (Notice ARC 5560C, IAB 4/21/21), IAB 6/16/21, effective 7/21/21]
 [Filed ARC 7033C (Notice ARC 6908C, IAB 2/22/23), IAB 5/31/23, effective 7/5/23]
 [Editorial change: IAC Supplement 6/28/23]

[◇] Two or more ARCs

¹ Effective date of 470—58.15(2)“c” delayed 70 days by the Administrative Rules Review Committee, IAB 2/26/86.
 Effective date of 470—58.15(2)“c” delayed until the expiration of 45 calendar days into the 1987 session of the General Assembly pursuant to Iowa Code section 17A.8(9), IAB 6/4/86.

² See IAB, Inspections and Appeals Department.

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

[Prior to 12/31/86, Conservation Commission[290] Ch 104]

571—108.1(481A) Mink, muskrat and weasel. Open season for the taking of mink, muskrat and weasel shall be from 8 a.m. on the first Saturday in November through February 28 of succeeding year. Entire state open. No bag or possession limit.

108.1(1) *Molesting or disturbing muskrat houses.* Any department of natural resources officer, natural resource biologist, or county conservation board director may permit trappers to molest or disturb muskrat houses on specific state or county game management areas as provided in Iowa Code section 481A.90, after finding that muskrats are causing excessive damage by destroying the vegetation essential to the welfare of a marsh and after so posting the area.

108.1(2) *Game management areas.* Open season for taking muskrats on certain state game management areas, certain federal national wildlife refuges, and certain county conservation board areas, only where approved by the wildlife bureau and posted accordingly, shall be from 8 a.m. the day after the regular muskrat trapping season ends until April 1. The use of leg-hold traps during this season is prohibited unless each trap is placed completely inside a muskrat house. No bag or possession limit.
[ARC 7933B, IAB 7/1/09, effective 8/5/09; ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.2(481A) Badger, opossum and striped skunk. Open season for the taking of badger, opossum, and striped skunk shall be from 8 a.m. on the first Saturday in November through February 28 of succeeding year. Entire state open. No bag or possession limit.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.3(481A) Raccoon.

108.3(1) *Hunting.* Continuous open season on private lands. Entire state open. No bag or possession limit.

108.3(2) *Trapping.* Continuous open season using cage traps and dog-proof traps on private lands. Trapping limitations described in 571—Chapter 110 apply to trapping raccoons from 8 a.m. on the first Saturday in November through February 28 of succeeding year. Entire state open. No bag or possession limit.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.4(481A) Red and gray fox. Open season for the taking of red and gray fox shall be from 8 a.m. on the first Saturday in November through February 28 of succeeding year. Entire state open. No bag or possession limit.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.5(481A) Beaver. Open season for the taking of beaver shall be from 8 a.m. on the first Saturday in November through April 15 of succeeding year. No bag or possession limit.
[ARC 9654B, IAB 8/10/11, effective 9/14/11; ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.6(481A) Coyote.

108.6(1) *Hunting.* Continuous open season. Entire state open. No bag or possession limit.

108.6(2) *Trapping.* Open season for trapping coyote shall be 8 a.m. on the first Saturday in November through February 28 of succeeding year. Entire state open. No bag or possession limit. Any conservation officer or wildlife biologist may authorize a landowner, tenant or designee to trap coyotes causing damage outside the established trapping season dates.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.7(481A) Gray (timber) wolf and spotted skunk. Continuous closed season.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.8(481A) River otter and bobcat.

108.8(1) License requirements. Each person who takes river otters or bobcats shall have a valid fur harvester license and pay the habitat fee if normally required to have a license to hunt or trap.

108.8(2) Open area. River otters may be taken statewide. Bobcats may be taken in the following counties: Adair, Adams, Appanoose, Audubon, Boone, Cass, Cedar, Cherokee, Clarke, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Fremont, Guthrie, Harrison, Henry, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Plymouth, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Shelby, Sioux, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, and Woodbury.

108.8(3) Seasonal bag limit.

a. The seasonal bag limit for river otters is 3 river otters per person.

b. The seasonal bag limit for bobcats is 1 bobcat per person in the following counties: Audubon, Boone, Cedar, Cherokee, Clinton, Crawford, Dallas, Delaware, Guthrie, Harrison, Iowa, Jackson, Jasper, Johnson, Jones, Lyon, Monona, Muscatine, Plymouth, Polk, Poweshiek, Scott, Shelby, Sioux, Webster, and Woodbury.

c. The seasonal bag limit for bobcats is 3 bobcats per person in the following counties: Adair, Adams, Appanoose, Cass, Clarke, Davis, Decatur, Des Moines, Fremont, Henry, Jefferson, Keokuk, Lee, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monroe, Montgomery, Page, Pottawattamie, Ringgold, Taylor, Union, Van Buren, Wapello, Warren, Washington, and Wayne.

d. No more than 3 bobcats total can be legally harvested by a fur harvester in a season. River otters or bobcats trapped in excess of the seasonal bag limit or in a closed area must be turned over to the department; the fur harvester shall not be penalized.

108.8(4) Season dates. The season for taking river otters and bobcats opens on the first Saturday in November and closes on February 28 of the following year.

108.8(5) Reporting requirements. Anyone, including a landowner or tenant not required to have a fur harvester license, who takes a river otter or bobcat must report the harvest and arrange to receive a CITES tag from the officer or designated DNR employee within seven days of harvest. The river otter or bobcat shall be skinned and its lower jaw or skull turned over to the DNR conservation officer or designated DNR employee at the time the CITES tag is issued. If the specimen is to be kept whole for taxidermy purposes, a cut shall be made by the trapper between the gum line and eye so the CITES tag can be attached to the skin.

108.8(6) Tagging requirements. Every river otter or bobcat that may legally be kept must have a CITES tag attached. Tags will be supplied by the conservation officer or designated DNR employee. The tag must remain with the pelt until the pelt is sold or used for other purposes that render it no longer available for sale. Persons displaying river otters or bobcats as taxidermy mounts or as other decorative items must keep the tags in their possession as proof of legal harvest.

[ARC 7933B, IAB 7/1/09, effective 8/5/09; ARC 8889B, IAB 6/30/10, effective 8/18/10; ARC 9654B, IAB 8/10/11, effective 9/14/11; ARC 0188C, IAB 7/11/12, effective 8/15/12; ARC 0831C, IAB 7/10/13, effective 8/14/13; ARC 3799C, IAB 5/9/18, effective 6/13/18; ARC 4530C, IAB 7/3/19, effective 8/7/19; ARC 5067C, IAB 7/1/20, effective 8/5/20; ARC 5681C, IAB 6/16/21, effective 7/21/21; ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.9(481A) Accidental capture of a river otter or bobcat during a closed season. A person who accidentally captures a river otter or bobcat during a closed season or in a closed area or after the person's individual bag limit has been reached shall not be penalized provided that:

1. The river otter or bobcat is captured during a legal trapping season or as part of a legal depredation control process; and

2. A conservation officer is contacted within 24 hours and the river otter or bobcat and all parts thereof are turned over to a conservation officer as soon as practical.

[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

571—108.10(481A) Trapping restrictions. Trapping for all furbearers will be restricted as follows:

108.10(1) Exposed bait. No person shall set or maintain any leghold, body-clasping trap, or snare within 20 feet of exposed bait on land anywhere in the state or over water in the following areas:

a. Mississippi River corridor—Allamakee, Clayton, Dubuque, Jackson, Clinton, Scott, Muscatine, Louisa, Des Moines and Lee Counties.

b. Missouri River corridor—Those portions of Woodbury, Monona, Harrison, Pottawattamie, Mills and Fremont Counties west of Interstate 29.

c. Des Moines River corridor—Boone, Dallas, Polk, Marion, Mahaska, Wapello and Van Buren Counties.

Exposed bait means meat or viscera or any animal, bird, fish, amphibian, or reptile with or without skin, hide, or feathers visible to soaring birds.

108.10(2) Trapping near beaver lodges and dens. Rescinded IAB 7/16/08, effective 8/20/08.
[ARC 7010C, IAB 5/3/23, effective 6/7/23; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

These rules are based on the best biological data available as determined by research conducted by the department of natural resources.

[Filed emergency 6/11/76—published 6/28/76, effective 6/11/76]

[Filed emergency 7/20/77—published 8/10/77, effective 9/1/77]

[Filed emergency 9/1/77—published 9/21/77, effective 10/15/77]

[Filed 6/28/78, Notice 3/8/78—published 7/26/78, effective 8/30/78]

[Filed emergency 8/9/78—published 9/6/78, effective 8/9/78]

[Filed 7/5/79, Notice 3/7/79—published 7/25/79, effective 8/29/79]

[Filed 7/2/80, Notice 3/5/80—published 7/23/80, effective 8/27/80]

[Filed 7/9/81, Notice 3/4/81—published 8/5/81, effective 9/9/81]

[Filed 6/3/82, Notice 3/3/82—published 6/23/82, effective 7/28/82]

[Filed 6/3/83, Notice 3/30/83—published 6/22/83, effective 8/1/83]

[Filed 6/13/84, Notice 2/29/84—published 7/4/84, effective 9/1/84]

[Filed 6/6/85, Notice 2/27/85—published 7/3/85, effective 8/15/85]

[Filed 6/11/86, Notice 2/26/86—published 7/2/86, effective 8/15/86]

[Filed without Notice 12/12/86—published 12/31/86, effective 2/4/87]

[Filed 6/11/87, Notice 3/11/87—published 7/1/87, effective 8/10/87]

[Filed 5/13/88, Notice 2/24/88—published 6/1/88, effective 7/6/88]

[Filed 5/12/89, Notice 3/8/89—published 5/31/89, effective 8/1/89]

[Filed 5/11/90, Notice 3/7/90—published 5/30/90, effective 8/1/90]

[Filed 5/10/91, Notice 3/6/91—published 5/29/91, effective 8/1/91]

[Filed 5/8/92, Notice 3/4/92—published 5/27/92, effective 8/3/92]

[Filed 5/7/93, Notice 3/31/93—published 5/26/93, effective 8/2/93]

[Filed 5/20/94, Notice 3/2/94—published 6/8/94, effective 8/1/94]

[Filed 5/15/95, Notice 3/1/95—published 6/7/95, effective 8/1/95]

[Filed 9/19/97, Notice 7/16/97—published 10/8/97, effective 11/12/97]

[Filed 5/18/05, Notice 3/30/05—published 6/8/05, effective 7/13/05]

[Filed 5/17/06, Notice 3/29/06—published 6/7/06, effective 7/12/06]

[Filed 6/14/07, Notice 5/9/07—published 7/4/07, effective 8/8/07]

[Filed 6/24/08, Notice 4/9/08—published 7/16/08, effective 8/20/08]

[Filed ARC 7933B (Notice ARC 7691B, IAB 4/8/09), IAB 7/1/09, effective 8/5/09]

[Filed ARC 8889B (Notice ARC 8685B, IAB 4/7/10), IAB 6/30/10, effective 8/18/10]

[Filed ARC 9654B (Notice ARC 9544B, IAB 6/1/11), IAB 8/10/11, effective 9/14/11]

[Filed ARC 0188C (Notice ARC 0115C, IAB 5/2/12), IAB 7/11/12, effective 8/15/12]

[Filed ARC 0831C (Notice ARC 0718C, IAB 5/1/13), IAB 7/10/13, effective 8/14/13]

[Filed ARC 3799C (Notice ARC 3624C, IAB 2/14/18), IAB 5/9/18, effective 6/13/18]

[Filed ARC 4530C (Notice ARC 4423C, IAB 5/8/19), IAB 7/3/19, effective 8/7/19]

[Filed ARC 5067C (Notice ARC 5033C, IAB 5/6/20), IAB 7/1/20, effective 8/5/20]

[Filed ARC 5681C (Notice ARC 5510C, IAB 3/10/21), IAB 6/16/21, effective 7/21/21]
[Filed ARC 7010C (Amended Notice ARC 6948C, IAB 3/8/23; Notice ARC 6815C, IAB 1/11/23),
IAB 5/3/23, effective 6/7/23]¹

¹ June 7, 2023, effective date of amendments to 108.1 to 108.10 [ARC 7010C] delayed 70 days by the Administrative Rules Review Committee at its meeting held May 8, 2023; delay lifted at the meeting held June 13, 2023.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]

[Prior to 12/23/92, see Disaster Services Division[607]; renamed Emergency Management Division by
1992 Iowa Acts, chapter 1139, section 21]

[Prior to 3/31/04, see Emergency Management Division[605]; renamed Homeland Security and Emergency Management
Division by 2003 Iowa Acts, chapter 179, section 157]

[Prior to 10/16/13, see Homeland Security and Emergency Management Division[605]; renamed Homeland Security and Emergency
Management Department by 2013 Iowa Acts, House File 307, section 2]

CHAPTER 1 ORGANIZATION

- 1.1(29C) Description
- 1.2(29C) Definitions
- 1.3(29C) Facilitating business rapid response to state-declared disasters
- 1.4(29C) Disaster case management grant fund and program
- 1.5(29C) Disaster aid individual assistance grant fund

CHAPTER 2 PETITIONS FOR RULE MAKING (Uniform Rules)

- 2.1(17A) Petition for rule making
- 2.2(17A) Briefs
- 2.3(17A) Inquiries
- 2.4(17A) Consideration

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 AGENCY PROCEDURE FOR RULE MAKING (Uniform Rules)

- 4.1(17A) Adoption by reference

CHAPTER 5 FAIR INFORMATION PRACTICES (Uniform Rules)

- 5.1(17A) Adoption by reference
- 5.9(17A,22) Federal records

CHAPTER 6 CONTESTED CASES

- 6.1(17A) Scope and applicability
- 6.2(17A) Definitions

6.3(17A)	Time requirements
6.4(17A)	Requests for contested case proceeding
6.5(17A)	Notice of hearing
6.6(17A)	Presiding officer
6.7(17A)	Waiver of procedures
6.8(17A)	Telephone proceedings
6.9(17A)	Disqualification
6.10(17A)	Consolidation—severance
6.11(17A)	Pleadings
6.12(17A)	Service and filing of pleadings and other papers
6.13(17A)	Discovery
6.14(17A)	Subpoenas
6.15(17A)	Motions
6.16(17A)	Prehearing conference
6.17(17A)	Continuances
6.18(17A)	Withdrawals
6.19(17A)	Intervention
6.20(17A)	Hearing procedures
6.21(17A)	Evidence
6.22(17A)	Default
6.23(17A)	Ex parte communication
6.24(17A)	Recording costs
6.25(17A)	Interlocutory appeals
6.26(17A)	Final decision
6.27(17A)	Appeals and review
6.28(17A)	Applications for rehearing
6.29(17A)	Stays of agency actions
6.30(17A)	No factual dispute contested cases
6.31(17A)	Emergency adjudicative proceedings

CHAPTER 7

LOCAL EMERGENCY MANAGEMENT

7.1(29C)	Scope and purpose
7.2(29C)	Definitions
7.3(29C)	Local emergency management commission
7.4(29C)	Local emergency management coordinator
7.5(29C)	Commission personnel
7.6(29C)	Damage assessment and financial assistance for disaster recovery
7.7(29C)	Emergency management performance grant (EMPG) program

CHAPTER 8

CRITERIA FOR AWARDS OR GRANTS

8.1(29C,17A)	Purpose
8.2(29C,17A)	Definitions
8.3(29C,17A)	Exceptions
8.4(29C,17A)	Public notice of available competitive grants
8.5(29C,17A)	Requirements
8.6(29C,17A)	Review process (competitive applications only)
8.7(29C,17A)	Opportunity for review and comment
8.8(29C,17A)	Awards

CHAPTER 9
IOWA COMPREHENSIVE PLAN

9.1(29C)	Description
9.2(29C)	Iowa Emergency Response Plan
9.3(29C)	Iowa Hazard Mitigation Plan
9.4(29C)	Iowa Disaster Recovery Plan

CHAPTER 10
911 TELEPHONE SYSTEMS

10.1(34A)	Program description
10.2(34A)	Definitions
10.3(34A)	Joint 911 service boards
10.4(34A)	911 service plan
10.5(34A)	Wireline 911 service surcharge
10.6(34A)	Waivers, variance request, and right to appeal
10.7(34A)	NG911 Network Implementation and Operations Plan
10.8(34A)	Emergency communications service surcharge
10.9(34A)	911 emergency communications fund
10.10(34A)	911 surcharge exemptions
10.11(34A)	911 service fund
10.12	Reserved
10.13(34A)	Limitations on use of funds
10.14(34A)	Minimum operational and technical standards
10.15(34A)	Administrative hearings and appeals
10.16(34A)	Confidentiality
10.17(34A)	Prepaid wireless 911 surcharge

CHAPTER 11
EMERGENCY ASSISTANCE

DIVISION I
IOWA DISASTER AID INDIVIDUAL ASSISTANCE GRANT PROGRAM

11.1(29C)	Definitions
11.2(29C)	Program implementation
11.3(29C)	Application for assistance
11.4(29C)	Eligibility criteria
11.5(29C)	Eligible categories of assistance
11.6(29C)	Eligibility determination and payment
11.7(29C)	Contested cases
11.8(29C)	Discontinuance of program
11.9 to 11.20	Reserved

DIVISION II
IOWA DISASTER CASE ADVOCACY

11.21(29C)	Purpose
11.22(29C)	Definitions
11.23(29C)	Program implementation
11.24(29C)	Eligibility criteria
11.25(29C)	Services
11.26(29C)	Disaster-caused unmet needs
11.27(29C)	Resources
11.28(29C)	Standards and policies
11.29(29C)	Planning and training

- 11.30(29C) Payment for services
- 11.31(29C) Contested cases

CHAPTER 12

HOMELAND SECURITY AND EMERGENCY RESPONSE TEAMS

- 12.1(29C) Purpose
- 12.2(29C) Definitions
- 12.3(29C) Homeland security and emergency response teams
- 12.4(29C) Use of homeland security and emergency response teams
- 12.5(29C) Homeland security and emergency response team compensation
- 12.6(29C) Alternate deployment of homeland security and emergency response teams

CHAPTER 13

Reserved

CHAPTER 14

FLOOD MITIGATION PROGRAM

- 14.1(418) Purpose
- 14.2(418) Definitions
- 14.3(418) Flood mitigation board
- 14.4(418) Flood mitigation project eligibility
- 14.5(418) Applications
- 14.6(418) Flood mitigation fund
- 14.7(418) Sales tax increment calculation and sales tax increment fund
- 14.8(418) Flood project fund
- 14.9(418) Board application review
- 14.10(418) Reports
- 14.11(418) Flood project bonds
- 14.12(418) Flood recovery fund

CHAPTER 15

MASS NOTIFICATION AND EMERGENCY MESSAGING SYSTEM

- 15.1(29C) Purpose
- 15.2(29C) Definitions
- 15.3(29C) Application for access
- 15.4(29C) Operational plan and procedures

CHAPTERS 16 to 99

Reserved

*IOWA EMERGENCY RESPONSE
COMMISSION*

CHAPTERS 100 and 101

Reserved

CHAPTER 102

EMERGENCY PLANNING DISTRICTS

- 102.1(30) Requirement to designate, and organization of, emergency planning districts
- 102.2(30) Emergency planning districts—counties
- 102.3(30) Application to modify districts

CHAPTER 103

LOCAL EMERGENCY PLANNING COMMITTEES

- 103.1(30) Requirement to appoint local emergency planning committees (LEPCs)
- 103.2(30) Local emergency planning committee (LEPC) members
- 103.3(30) Local emergency planning committee (LEPC) duties
- 103.4(30) Emergency response plan development
- 103.5(30) Local emergency planning committee (LEPC) office
- 103.6(30) Local emergency response committee (LEPC) meetings
- 103.7(30) Local emergency response plan submission

CHAPTER 104

REQUIRED REPORTS AND RECORDS

- 104.1(30) Department of homeland security and emergency management
- 104.2(30) Department of natural resources

CHAPTER 11
EMERGENCY ASSISTANCE

[Prior to 6/28/23, see Human Services Department[441] Ch 58]

DIVISION I
IOWA DISASTER AID INDIVIDUAL ASSISTANCE GRANT PROGRAM

PREAMBLE

This division implements a state program of financial assistance to meet disaster-related expenses, food-related costs, or serious needs of individuals or families who are adversely affected by a state-declared disaster emergency. The program is intended to meet needs that cannot be met by other means of financial assistance.

605—11.1(29C) Definitions.

“Bona fide residence” or *“bona fide address,”* as set forth in Iowa Code section 321.1(6C), means the pre-disaster street or highway address of an individual’s dwelling or dwelling unit. The bona fide residence of a person with more than one dwelling is the dwelling for which the person claims a homestead tax credit under Iowa Code chapter 425, if applicable. The bona fide residence of a homeless person is a primary nighttime residence meeting one of the criteria listed in Iowa Code section 48A.2(3).

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

“Dwelling” or *“dwelling unit”* means the structure in which a household resides. *“Dwelling”* or *“dwelling unit”* includes permanent structures, mobile homes, manufactured homes, modular homes, fifth-wheel travel trailers, travel trailers, and motor homes in which a household resides.

“Emergency management coordinator” means the person appointed by the local emergency management commission pursuant to Iowa Code sections 29C.9 and 29C.10 to be responsible for development of the countywide emergency operations plan and for coordination and assistance to government officials when an emergency or disaster occurs.

“Fifth-wheel travel trailer,” as set forth in Iowa Code section 321.1(36D) *“c,”* means a type of travel trailer which is towed by a pickup by a connecting device known as a fifth wheel. However, this type of travel trailer may have an overall length which shall not exceed 45 feet.

“Home” means the pre-disaster dwelling or dwelling unit for a household.

“Household” means all adults and children who lived in the pre-disaster residence who request assistance, as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“Manufactured home” or *“modular home,”* as set forth in Iowa Code section 321.1(36C), is a factory-built structure constructed under authority of 42 U.S.C. §5403 as amended to August 25, 2022, which is required by federal law to display a seal from the United States Department of Housing and Urban Development, and was constructed on or after June 15, 1976.

“Manufactured or mobile home,” as set forth in Iowa Code section 321.1(36D) *“a,”* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons.

“Mitigation” means the effort to reduce the loss of life and property by lessening the impact of disasters to reduce human and financial consequences later.

“Motor home,” as set forth in Iowa Code section 321.1(36D) *“d,”* means a motor vehicle designed as an integral unit to be used as a conveyance upon the public streets and highways and for use as a temporary or recreational dwelling and having at least four, two of which shall be systems specified in paragraph “1,” “4,” or “5” of this definition, of the following permanently installed systems which meet American National Standards Institute and National Fire Protection Association standards in effect on the date of manufacture:

1. Cooking facilities.
2. Ice box or mechanical refrigerator.

3. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.

4. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.

5. Heating or air conditioning system or both, separate from the vehicle engine or the vehicle engine electrical system.

6. A 110- to 115-volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.

“*Necessary expense*” means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

“*Owner*” means one or more persons, jointly or severally, in whom is vested all or part of the legal title to property or all or part of the beneficial ownership and a right to present use and enjoyment of the property. “*Owner*” includes a mortgagee in possession.

“*Rent*” means an amount paid to the landlord under the rental agreement.

“*Safe, sanitary, and secure*” means free from disaster-related health hazards.

“*Serious need*” means the item or service is essential to the household to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

“*Tenant*” means a person or persons entitled under a rental agreement to occupy a dwelling or dwelling unit to the exclusion of others.

“*Travel trailer,*” as set forth in Iowa Code section 321.1(36D) “*b,*” means a vehicle without motive power used, manufactured, or constructed to permit its use as a conveyance upon the public streets and highways and designed to permit its use as a place of human habitation by one or more persons. The vehicle may be up to 8 feet, 6 inches in width and its overall length shall not exceed 45 feet. The vehicle shall be customarily or ordinarily used for vacation or recreational purposes and not used as a place of permanent habitation. If the vehicle is used in this state as a place of human habitation for more than 180 consecutive days in one location, the vehicle shall be classed as a manufactured or mobile home regardless of the size limitations provided in this definition.

[ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 5596C, IAB 5/5/21, effective 7/1/21; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.2(29C) Program implementation.

11.2(1) *Disaster declaration.* The Iowa individual assistance grant program (IIAGP) shall be implemented when the governor issues a declaration of a state of disaster emergency that authorizes individual assistance. The program shall be in effect only in those counties named in the declaration. Assistance shall be provided for a period not to exceed 120 days from the date of declaration.

11.2(2) *Voucher system.* The IIAGP will be implemented through a reimbursement or voucher system. Reimbursement may include checks or gift cards provided to the applicant for replacement food or personal property only. The applicant must sign a promise to purchase replacement food or personal property.

11.2(3) *Program extensions.*

a. The program may be extended beyond 120 days through an extension of the governor’s disaster proclamation; or

b. The program may be extended in 30-day intervals requested by the applicant household through the contracted entity and approved by the department.

[ARC 9128B, IAB 10/6/10, effective 10/1/10; ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.3(29C) Application for assistance. To request assistance for disaster-related expenses, the household shall complete Form 470-4448 and submit it within 45 days of the disaster declaration to the contracted administrative entity.

11.3(1) Application forms are available from an approved administrative entity, as well as the Internet website of the department at www.homelandsecurity.iowa.gov.

11.3(2) The application shall include:

- a.* A declaration of the household's annual income, accompanied by a current pay stub, W-2 form, or income tax return.
- b.* An authorization to release confidential information to personnel involved in administering the program.
- c.* A certification of the accuracy of the information provided.
- d.* An assurance that the household had no insurance coverage for claimed items.
- e.* A commitment to refund any part of a grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to local community development groups and charities, the Small Business Administration, or the Federal Emergency Management Administration.
- f.* A short, handwritten narrative of how the disaster event caused the claimed loss, including an itemized list of items damaged by the disaster.
- g.* A copy of a picture identification document for the adult applicant.
- h.* When vehicle damage is claimed, current copies of the vehicle registration and liability insurance card.

11.3(3) The application period may be extended beyond 45 days through an extension of the governor's disaster proclamation. If the forty-fifth day falls on a Saturday, Sunday, or holiday, the deadline is moved to the following business day.

[ARC 9128B, IAB 10/6/10, effective 10/1/10; ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.4(29C) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

11.4(1) The household's bona fide residence was located in the area identified in the disaster declaration during the designated incident period and the household verifies occupancy at that residence.

11.4(2) Household members are citizens of the United States or are legally residing in the United States.

11.4(3) The household's self-declared annual income is at or less than 200 percent of the federal poverty level for a household of that size.

a. Poverty guidelines are updated annually.

b. All income available to the household is counted, including wages, child support, interest from investments or bank accounts, social security benefits, and retirement income. Proof of income is required.

11.4(4) The household has unmet disaster-related expenses or serious needs that are not covered by insurance. The applicant must provide claim documentation from the insurance company.

11.4(5) The household has not previously received assistance from this program or another program for the same loss in the same disaster.

11.4(6) Household eligibility for home repair assistance for a dwelling or dwelling unit damaged due to a proclaimed disaster is only available for a household that owns and occupies the dwelling or dwelling unit being repaired.

a. Assistance will be denied if preexisting conditions are the cause of the damage.

b. Repairs to rental dwellings, dwelling units, or landlord-owned equipment are excluded under this program.

[ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.5(29C) Eligible categories of assistance. Expenses eligible for grant funding shall be limited to personal property, food assistance, home repair and temporary housing and shall not exceed a total of \$5,000. Assistance is available under the program for the following disaster-related expenses:

11.5(1) Personal property and food assistance may be issued for damage to personal property or food replacement. Eligible items for personal property assistance may include but are not limited to the following items, based on the item's condition:

a. Appliances or equipment, including:

- (1) Small household appliances, including, but not limited to:
 - 1. Toasters,
 - 2. Blenders,
 - 3. Microwaves,
 - 4. Vacuums,
 - 5. Dehumidifiers, and
 - 6. Window air conditioners.
- (2) Large household appliances, if the appliance is owned by the household and not a landlord.
- (3) Outdoor equipment, including:
 - 1. Lawn mowers, and
 - 2. Snow blowers.
- b.* Food.
- c.* Personal hygiene items.
- d.* Basic household items, including but not limited to:
 - (1) Furnishings (e.g., tables, chairs, dressers, couches, end tables),
 - (2) Beds (e.g., mattresses, bedding),
 - (3) Curtains or window treatments,
 - (4) Car or booster seats,
 - (5) Strollers,
 - (6) Storage totes,
 - (7) Televisions,
 - (8) Laptop or desktop computers, and
 - (9) Area rugs.
- e.* Clothing.
- f.* Short-term transportation, such as bus passes.
- g.* Debris removal.
- h.* Vehicle repair or replacement, if a total loss has occurred.
- i.* Other personal property items, as determined by the department, in order to assist the household in making the dwelling or dwelling unit safe, sanitary, and secure.

11.5(2) Home repair assistance may be issued for home repair for an owner-occupied dwelling or dwelling unit as needed to make the dwelling or dwelling unit safe, sanitary, and secure, up to a maximum of \$5,000.

- a.* Assistance will be denied if preexisting conditions are the cause of the damage.
- b.* Repairs to rental dwellings or dwelling units or landlord-owned equipment are excluded under this program.
- c.* Assistance may be authorized for:
 - (1) The repair of structural components, such as the foundation and roof.
 - (2) The repair of floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.
 - (3) Mitigation measures.
 - (4) Debris removal, including trees.
 - (5) Bathroom, including toilet, sink, and tub/shower.
 - (6) Sump pump installation (in a flood event only).
 - (7) Electrical or mechanical repairs.
 - (8) Water heater.
 - (9) Heating systems.
 - (10) Air-conditioning systems.
 - (11) Water well repair for dwellings or dwelling units with no other source of water available.
 - (12) Water softener repair.

11.5(3) Temporary housing assistance may be issued to a household for lodging at a licensed establishment, such as a hotel or motel. The household's home must be considered to be destroyed,

uninhabitable, inaccessible, or unavailable to the household. Total temporary housing assistance may not exceed \$5,000 and is included as part of disaster assistance.

Temporary housing assistance may also be granted for rental unit application fees, deposits, and first month's rent for a new dwelling.

11.5(4) Replacement, repair, or provision of other items of necessity may be approved by the department on a case-by-case basis, up to a maximum of \$5,000.

[ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.6(29C) Eligibility determination and payment.

11.6(1) The contracted entity or designee shall confirm that the bona fide address provided on the application is a valid address and is reasonably believed to be in the disaster-affected area. The department or contracted entity reserves the right to view the damaged property prior to providing any assistance pursuant to IIAGP.

11.6(2) Designated staff in the department shall:

- a. Monitor applicants' names and addresses as reports are submitted by the administrative entity.
- b. Monitor, review, and provide timely submission of invoices by the administrative entity for payment and shall process appeals.

11.6(3) For applications with a voucher or reimbursement request, the department or its designee shall:

- a. Determine eligibility and the amount of payment within the rules of the program.
- b. Notify the applicant household of the eligibility decision in accordance with notice requirements in 441—Chapter 16.
- c. Authorize vouchers to an eligible household to purchase needed goods and services.
- d. Pay vendors for goods and services purchased with vouchers.

[ARC 9128B, IAB 10/6/10, effective 10/1/10; ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.7(29C) Contested cases.

11.7(1) *Reconsideration.*

a. The household may request reconsideration of decisions regarding eligibility and the amount of assistance awarded.

b. To request reconsideration, the household shall submit a written request to the Iowa Department of Homeland Security and Emergency Management, 7900 Hickman Road, Windsor Heights, Iowa 50324, within 30 days of the date of the letter notifying the household of the department's decision.

c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within 30 days of receipt of the request.

11.7(2) *Appeal.* The household may appeal the department's reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing to the Iowa Department of Homeland Security and Emergency Management, 7900 Hickman Road, Windsor Heights, Iowa 50324, within 30 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency.

[ARC 9312B, IAB 12/29/10, effective 3/1/11; ARC 1353C, IAB 3/5/14, effective 5/1/14; ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.8(29C) Discontinuance of program.

11.8(1) *Deferral to federal assistance.* Upon declaration of a disaster by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121 to 5207, the Iowa individual assistance grant program administered under this chapter shall be discontinued in the geographic area designated by the federal individual assistance program. Upon issuance of the presidential declaration:

- a. No more applications shall be accepted.

- b. Any applications that are in process but are not yet approved shall be denied.
- c. Persons seeking assistance under this program shall be advised to apply for federal disaster assistance.

11.8(2) Exhaustion of funds. The program shall be discontinued when funds available for the program have been exhausted. To ensure equitable treatment, applications for assistance shall be approved on a first-come, first-served basis until all funds have been depleted. “First-come, first-served” is determined by the date the application is approved for payment.

a. *Partial payment.* Because funds are limited, applications may be approved for less than the amount requested. Payment cannot be approved beyond the amount of funds available.

b. *Reserved funds.* A portion of allocated funds shall be reserved for final appeal decisions reversing the department’s denial that are received after funds for the program have been awarded.

c. *Untimely applications.* Applications received after the program is discontinued shall be denied. [ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code chapter 29C.

605—11.9 to 11.20 Reserved.

DIVISION II
IOWA DISASTER CASE ADVOCACY

605—11.21(29C) Purpose. The purpose of these rules is to guide the provision of the Iowa disaster case advocacy (IDCA) program during the time of emergency disaster for individual assistance when a disaster is proclaimed by the governor of the state of Iowa.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.22(29C) Definitions.

“*Contracted entity*” means an entity chosen by the department as the contracted administrator for the IDCA program.

“*Emergency management coordinator*” means the person appointed by the local emergency management commission pursuant to Iowa Code sections 29C.9 and 29C.10 to be responsible for development of the countywide emergency operations plan and for coordination and assistance to government officials when an emergency or disaster occurs.

“*Household*” means all adults and children who lived in the pre-disaster residence who request assistance, as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

“*Necessary services*” means the guidance and advice in obtaining a service, or assistance in obtaining resources from various providers for any other activity that addresses a serious need.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.23(29C) Program implementation.

11.23(1) Disaster proclamation. The Iowa disaster case advocacy (IDCA) program shall be implemented when the governor issues a proclamation of a state of emergency disaster that authorizes individual assistance.

- a. The program shall be in effect only in those counties named in the proclamation.
- b. The program shall commence on the day following the governor’s disaster proclamation and shall be provided for a period of up to 180 days from the date of proclamation.
- c. The program may be extended in intervals up to 90 days when adequate justification is presented to the department, but not to exceed 730 days from the date of the proclamation.
- d. If the disaster transforms to become a presidentially declared disaster and a Federal Emergency Management Agency (FEMA) disaster case management (DCM) grant is approved, then assistance may be provided for a period of up to 24 months from the date of the proclamation.
- e. The reporting of the numbers of contacts, cases opened, cases pending, cases closed, and other required reports requested by the department shall be submitted with a frequency determined by the department.

f. Audits of disaster case files, as well as cost management and expenditures, may be randomly performed by the department without notice.

11.23(2) Contracting. The administrative entity currently under contract for the Iowa disaster aid individual assistance grant program (IIAGP) shall receive an amended contract to specify administration of the IDCA program.

a. Future contract renewals shall be inclusive with the IIAGP and as amended to include the IDCA program.

b. If a local contracted entity is under contract with the state to provide other services or is implementing a state or federal program and the contract contains a sufficient surety bond or other adequate financial responsibility provision, the department shall accept the existing surety bond or financial responsibility provisions in lieu of applying a new or additional surety bond or financial responsibility requirement.

c. The contracted entity shall coordinate activities with emergency management coordinators and voluntary organizations active in the disaster while the program is active. The contracted entity may subcontract with other entities to provide disaster case advocacy with the approval of the department.
[ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

605—11.24(29C) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

11.24(1) The household's residence was located in the area identified in the disaster proclamation during the designated incident period and the household verifies occupancy at that residence.

11.24(2) Household members are citizens of the United States or are legally residing in the United States.

11.24(3) The household has disaster-related needs that represent a burden that the family is unable to resolve.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.25(29C) Services. Disaster case advocacy is a time-limited resource and process that involves a partnership between a case manager and a household impacted by a disaster (also known as a client) to develop and carry out a disaster recovery plan. This partnership provides the client with a single point of contact to facilitate access to a broad range of resources, promoting sustainable assistance for individuals and a household's recovery. These services are client-focused and provided in a manner consistent with standards for trauma-informed practice in human services.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.26(29C) Disaster-caused unmet needs. A disaster-caused unmet need is an unresourced item, support, or assistance that has been assessed by a representative from a local, state, tribal, federal agency, voluntary, or faith-based organization and that is needed for the client to recover from the disaster. Unmet disaster-caused needs may also include basic and immediate needs, such as food, clothing, shelter, or first aid, and long-term needs, such as financial, physical, emotional or spiritual well-being.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.27(29C) Resources. Applicable resources may include, but not be limited to, insurance payments, state assistance, voluntary/faith-based and local community assistance, federal disaster assistance, small business administration loans, and personal resources.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.28(29C) Standards and policies.

11.28(1) Access. The contracted entity shall provide clients with ease of access to disaster case advocacy services.

11.28(2) Confidentiality and duplications of benefits.

a. The contracted entity shall have policies and procedures to meet requirements regarding maintaining confidentiality set forth by the department.

b. The contracted entity shall develop memorandums of agreement, memorandums of understanding, and release of information that will allow coordinated case advocacy and services and prevent the duplication of benefits.

11.28(3) *Engagement.* The case manager shall create a sustainable, trusting partnership with the client.

11.28(4) *Screening.* The case manager shall perform screening to determine eligibility and disaster-related unmet needs.

11.28(5) *Intake and assessment.* The case manager shall perform intake and assessment procedures to triage disaster-related needs of eligible households.

a. A case manager shall conduct an assessment specifically seeking targeted information to identify a client's disaster-related needs.

b. An assessment should focus on planning for recovery and meeting recovery goals.

c. An assessment should be conducted in person, when feasible, and should follow all standards for confidentiality and engagement.

11.28(6) *Recovery planning.*

a. A recovery plan should outline tasks for both the client and case manager based on an assessment and documentation of needed services.

b. The plan should identify priority needs and connect the client with resources, establish benchmarks and goals to measure progress toward recovery, and outline a case closure procedure.

c. The plan should be a joint effort between the case manager and the client.

d. The case manager should explain the available options, the resource and recovery alternatives, and the support services offered by the case manager.

11.28(7) *Action and advocacy.* The case manager's role in recovery includes: providing, referring or arranging for needed services and resources; verifying unmet needs, completing documentation and checking duplication of benefits; and actively advocating for the client through presentation, participation in recovery groups and interface with government and nongovernment resource providers.

11.28(8) *Monitoring.* Monitoring the services allows the case manager to keep documents up to date, to determine if the chosen resources are providing the services needed, and to evaluate whether adjustments are needed.

11.28(9) *Closure.*

a. Closure procedures should be outlined in the recovery plan and the roles and responsibilities of the client and case manager clearly defined.

b. Case closure acknowledges the recovery goals achieved, recognizes the progress made toward unmet goals, and identifies needed resources to continue progress.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.29(29C) *Planning and training.* Training shall adhere to the disaster case management criteria, as prescribed by the federal Administration for Children and Families, and follow the disaster case advocacy guidelines as designed by the Iowa disaster human resource council or the approved rules of the department. The department shall request from the executive council of the state of Iowa funds to perform training in disaster case advocacy as requested and required to prepare for disaster response.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.30(29C) *Payment for services.*

11.30(1) The department will negotiate payment with the contracted entity when the contract is established. Payment will be based on the contracted entity's actual direct and indirect costs.

11.30(2) The department will accept the contracted entity's federally approved indirect cost rates as required by the federal Office of Management and Budget (OMB).

11.30(3) The local administrative entity may draw down grant funding to pay valid claims on at least a weekly basis.

11.30(4) *Exhaustion of funds.* The program shall be discontinued when the funds available for the program have been exhausted. The department will notify the contracted entity of the total available funds for the IDCA program once funds have been approved by the executive council. To ensure

equitable treatment, assistance shall be approved on a first-come, first-served basis until all funds have been exhausted.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; Editorial change: IAC Supplement 6/28/23]

605—11.31(29C) Contested cases.

11.31(1) Reconsideration.

- a. The household may request reconsideration of decisions regarding eligibility.
- b. To request reconsideration, the household shall submit a written request to the Iowa Department of Homeland Security and Emergency Management, 7900 Hickman Road, Windsor Heights, Iowa 50324, within 30 days of the date of the letter notifying the household of the contracted entity's decision.
- c. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within 30 days of receipt of the request.

11.31(2) Appeal. The household may appeal the department's reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing to the Iowa Department of Homeland Security and Emergency Management, 7900 Hickman Road, Windsor Heights, Iowa 50324, within 30 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency.

[ARC 3058C, IAB 5/10/17, effective 7/1/17; ARC 6850C, IAB 2/8/23, effective 4/1/23; Editorial change: IAC Supplement 6/28/23]

These rules are intended to implement Iowa Code sections 234.6 and 29C.20B.

605—11.32 to 11.40 Reserved.

DIVISION III
TEMPORARY MEASURES RELATED TO DISASTERS
Rescinded IAB 5/10/17, effective 7/1/17

605—11.41 to 11.50 Reserved.

DIVISION IV
IOWANS HELPING IOWANS UNMET NEEDS DISASTER ASSISTANCE PROGRAM
Rescinded IAB 5/10/17, effective 7/1/17

605—11.51 to 11.60 Reserved.

DIVISION V
TICKET TO HOPE PROGRAM
Rescinded IAB 5/10/17, effective 7/1/17

605—11.61 to 11.68 Reserved.

[Filed emergency 10/12/90 after Notice 8/22/90—published 10/31/90, effective 11/1/90]

[Filed emergency 6/14/91—published 7/10/91, effective 7/1/91]

[Filed without Notice 9/18/91—published 10/16/91, effective 11/21/91]

[Filed 9/18/91, Notice 7/10/91—published 10/16/91, effective 12/1/91]

[Filed emergency 10/10/91—published 10/30/91, effective 11/21/91]

[Filed 1/29/92, Notice 10/16/91—published 2/19/92, effective 3/25/92]

[Filed 5/14/92, Notice 3/18/92—published 6/10/92, effective 8/1/92]

[Filed emergency 9/17/93—published 10/13/93, effective 10/1/93]

[Filed emergency 11/12/93—published 12/8/93, effective 1/1/94]

[Filed 12/16/93, Notice 10/13/93—published 1/5/94, effective 3/1/94]

[Filed 2/10/94, Notice 12/8/93—published 3/2/94, effective 5/1/94]

[Filed emergency 1/15/97—published 2/12/97, effective 3/1/97]

[Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]

- [Filed emergency 9/12/02 after Notice 7/24/02—published 10/2/02, effective 10/1/02]
 - [Filed emergency 3/5/07—published 3/28/07, effective 3/5/07]
- [Filed emergency 6/13/07 after Notice 3/28/07—published 7/4/07, effective 7/1/07]
 - [Filed emergency 6/11/08—published 7/2/08, effective 7/1/08]
 - [Filed emergency 7/9/08—published 7/30/08, effective 7/9/08]
 - [Filed 10/14/08, Notice 7/2/08—published 11/5/08, effective 12/10/08]
 - [Filed 12/15/08, Notice 10/22/08—published 1/14/09, effective 3/1/09]
- [Filed ARC 7577B (Notice ARC 6995B, IAB 7/30/08), IAB 2/25/09, effective 4/1/09]
 - [Filed Emergency ARC 7603B, IAB 3/11/09, effective 2/11/09]
 - [Filed Emergency ARC 7641B, IAB 3/25/09, effective 3/1/09]
- [Filed ARC 7830B (Notice ARC 7642B, IAB 3/25/09), IAB 6/3/09, effective 7/8/09]
- [Filed ARC 8007B (Notice ARC 7604B, IAB 3/11/09), IAB 7/29/09, effective 9/2/09]
- [Filed ARC 8640B (Notice ARC 8460B, IAB 1/13/10), IAB 4/7/10, effective 5/12/10]
 - [Filed Emergency ARC 9130B, IAB 10/6/10, effective 9/15/10]
 - [Filed Emergency ARC 9128B, IAB 10/6/10, effective 10/1/10]
- [Filed ARC 9313B (Notice ARC 9131B, IAB 10/6/10), IAB 12/29/10, effective 2/2/11]
- [Filed ARC 9312B (Notice ARC 9129B, IAB 10/6/10), IAB 12/29/10, effective 3/1/11]
- [Filed ARC 1353C (Notice ARC 1257C, IAB 12/25/13), IAB 3/5/14, effective 5/1/14]
- [Filed ARC 3058C (Notice ARC 2898C, IAB 1/18/17), IAB 5/10/17, effective 7/1/17]
- [Filed ARC 5596C (Notice ARC 5471C, IAB 2/24/21), IAB 5/5/21, effective 7/1/21]
- [Filed ARC 6850C (Notice ARC 6690C, IAB 11/30/22), IAB 2/8/23, effective 4/1/23]
 - [Editorial change: IAC Supplement 6/28/23]

PUBLIC HEALTH DEPARTMENT[641]

Rules of divisions under this department “umbrella” include Professional Licensure[645], Dental Board[650], Medical Board[653],
Nursing Board[655] and Pharmacy Board[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 |
| STATE HYGIENIC LABORATORY | |
| 1.18(135,139A) | Specimens for which the fee charged by the state hygienic laboratory shall be waived |

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 (EHDI) PROGRAM

- 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 and child's primary care provider
 - 3.10(135) Conducting and reporting screening results and diagnostic audiologic assessments to the department and child's primary care provider
 - 3.11(135) Congenital cytomegalovirus (cCMV) testing for newborns who do not pass the initial newborn hearing screening
 - 3.12(135) Sharing of information and confidentiality
 - 3.13(135) Procedure to accommodate parental objection
 - 3.14(135) Civil/criminal liability
 - 3.15(135) Early hearing detection and intervention advisory committee
 - 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 overview
- 4.2(136A) Definitions
- 4.3(136A) Iowa newborn screening program (INSP)
- 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)
- 4.8(135) Iowa's early hearing detection and intervention program
- 4.9 and 4.10 Reserved

CENTER FOR CONGENITAL AND INHERITED DISORDERS ADVISORY COMMITTEE (CIDAC)

- 4.11(136A) Purpose
- 4.12(136A) Duties of the advisory committee
- 4.13(136A) Membership
- 4.14(136A) Meetings

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) Statewide registry
- 7.12(22) Release of immunization and health screening information

CHAPTER 8
IOWA CARE FOR YOURSELF (IA CFY) PROGRAM

- 8.1(135) Definitions
- 8.2(135) Components of the Iowa care for yourself (IA CFY) program
- 8.3(135) Participant eligibility criteria
- 8.4(135) Participant application procedures for IA CFY program services
- 8.5(135) Priority for program expenditures
- 8.6(135) Right to appeal
- 8.7(135) Verification for the breast or cervical cancer treatment (BCCT) option of Medicaid

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 and Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators-accredited programs
- 9.5(135) Renewal procedures for American Diabetes Association-recognized and Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators-accredited programs
- 9.6(135) Application procedures for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators
- 9.7(135) Diabetes program management for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators

- 9.8(135) Program staff for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators
- 9.9(135) Renewal application procedures for programs not recognized by the American Diabetes Association or accredited by the Association of Diabetes Care and Education Specialists/American Association of Diabetes Educators
- 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

IOWA GET SCREENED: COLORECTAL CANCER PROGRAM

- 10.1(135) Purpose
- 10.2(135) Definitions
- 10.3(135) Components of the Iowa get screened (IGS): colorectal cancer program
- 10.4(135) Participant eligibility criteria
- 10.5(135) Participant application procedures for IGS program services
- 10.6(135) Priority for program expenditures
- 10.7(135) Right to appeal
- 10.8(135) Colorectal cancer treatment

CHAPTER 11

HUMAN IMMUNODEFICIENCY VIRUS (HIV) INFECTION AND ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS)

- 11.1(139A,141A) Definitions
- 11.2(141A) HIV testing—obtaining consent—voluntary HIV-related tests for adults who are not pregnant
- 11.3(139A,141A) HIV testing—obtaining consent—voluntary HIV-related tests for minors who are not pregnant
- 11.4(141A) HIV testing—obtaining consent—voluntary HIV-related tests for pregnant women
- 11.5(141A) HIV test results—post-test counseling
- 11.6(141A) Reporting of diagnoses and HIV-related tests, events, and conditions to the department
- 11.7(141A) Penalties
- 11.8(141A) Immunity
- 11.9 and 11.10 Reserved

TRAINING PROGRAMS

- 11.11(135) Purpose
- 11.12 to 11.14 Reserved

PARTNER NOTIFICATION SERVICES AND DIRECT NOTIFICATION OF AN IDENTIFIABLE THIRD PARTY

- 11.15(139A,141A) Purpose
- 11.16(139A,141A) Definitions
- 11.17(139A,141A) Partner notification services by the department
- 11.18(141A) Direct notification of an identifiable third party by a physician, physician assistant or the department
- 11.19 and 11.20 Reserved

CARE PROVIDERS EXPOSED TO CONTAGIOUS OR INFECTIOUS DISEASES

- 11.21(139A) Purpose
- 11.22(139A) Definitions

- 11.23(139A,141A) Exposures in non-clinical settings
- 11.24(139A,141A) Exposures in clinical settings
- 11.25(139A) Immunity
- 11.26(139A) Duty to test
- 11.27 to 11.29 Reserved

HIV-RELATED TEST FOR CONVICTED OR ALLEGED SEXUAL-ASSAULT OFFENDERS AND VICTIMS

- 11.30(915) Purpose
- 11.31(915) Definitions
- 11.32(915) HIV-related test—convicted or alleged sexual assault offender
- 11.33(915) Medical examination costs
- 11.34(915) Testing, reporting, and counseling—penalties
- 11.35 to 11.39 Reserved

AIDS DRUG ASSISTANCE PROGRAM (ADAP)

- 11.40(141A) Definitions
- 11.41(141A) Purpose
- 11.42(141A) Ensuring payer of last resort
- 11.43(141A) Eligibility requirements
- 11.44(141A) Enrollment process
- 11.45(141A) Discontinuation of services
- 11.46(141A) Distribution requirements
- 11.47(141A) ADAP waiting list
- 11.48(141A) Appeals
- 11.49(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

CHAPTERS 13 and 14

Reserved

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)	Waivers
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 brain and spinal cord 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)	Fees
22.9(135)	Tattoo establishment permit requirements
22.10(135)	Tattoo artist permit requirements
22.11(135)	Temporary establishment permit requirements
22.12(135)	Mobile tattoo unit permit requirements
22.13(135)	Agreements
22.14(135)	Inspection requirements
22.15(135)	Tattoo inspector qualifications
22.16(135)	Enforcement
22.17(135)	Adverse actions and the appeal process

CHAPTER 23
PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE PRACTICE

23.1(105)	Definitions
23.2(105)	Duties of all licensees, specialty licensees, and certificate holders
23.3(105)	Contractor license
23.4(105)	Master license
23.5(105)	Journeyman license
23.6(105)	Apprentice license
23.7(105)	Specialty licenses and certifications
23.8(105)	Inactive license

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	Reserved
24.13(135)	Grant amendments
24.14(135)	Termination or forfeiture of grant funds

CHAPTER 25
STATE PLUMBING CODE

25.1(105)	Adoption
25.2(105)	Applicability

- 25.3(105) Fuel gas piping
- 25.4(105) Amendments to Uniform Plumbing Code
- 25.5(105) 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, probation, suspension or revocation

CHAPTER 27

PLUMBING AND MECHANICAL SYSTEMS BOARD—ADMINISTRATIVE AND REGULATORY AUTHORITY

- 27.1(17A,105) Definitions
- 27.2(17A,105) 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) Annual review of fee schedule
- 28.3(105) Waiver of fees

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(105) License reissue
- 29.9(105) Waiver from examination for military service
- 29.10(105) Reactivation of an inactive license
- 29.11(105) Review of applications
- 29.12(105) Grounds for denial of an application
- 29.13(105) Use of criminal convictions in eligibility determinations and initial licensing decisions

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)	Compliance review 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 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
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)	Reports to administrative code editor and administrative rules coordinator
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
32.6(105,272C)	Collection of delinquent civil penalties and discipline-related debts

CHAPTER 33
PLUMBING AND MECHANICAL SYSTEMS BOARD—CONTESTED CASES

33.1(17A,105,272C)	Scope and applicability
33.2(17A,105,272C)	Definitions
33.3(17A)	Time requirements
33.4(17A,272C)	Probable cause
33.5(17A,272C)	Informal settlement
33.6(17A)	Statement of charges
33.7(17A)	Requests for contested case proceeding
33.8(105)	Legal representation
33.9(17A,105,272C)	Presiding officer in a disciplinary contested case
33.10(17A)	Presiding officer in a nondisciplinary contested case

33.11(17A)	Disqualification
33.12(17A)	Consolidation—severance
33.13(17A)	Pleadings
33.14(17A)	Service and filing
33.15(17A)	Discovery
33.16(17A,272C)	Subpoenas in a contested case
33.17(17A)	Motions
33.18(17A)	Withdrawals
33.19(17A)	Intervention
33.20(17A)	Telephone proceedings
33.21(17A)	Prehearing conferences
33.22(17A)	Continuances
33.23(272C)	Settlement agreements
33.24(17A)	Hearing procedures
33.25(17A)	Evidence
33.26(17A)	Default
33.27(17A)	Ex parte communication
33.28(17A)	Recording costs
33.29(17A)	Interlocutory appeals
33.30(17A,272C)	Decisions
33.31(17A,272C)	Client notification
33.32(17A,272C)	Application for rehearing
33.33(17A)	Stays of board actions
33.34(17A)	No factual dispute contested cases
33.35(17A)	Emergency adjudicative proceedings
33.36(17A,105,272C)	License denial
33.37(17A,105,272C)	Denial of application to renew license
33.38(105,272C)	Recovery of hearing fees and expenses
33.39(17A)	Judicial review
33.40(17A,272C)	Reinstatement

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—ALTERNATIVE LICENSURE PATHWAYS

35.1(105)	Definitions
35.2(105)	Reciprocity agreements
35.3(105)	Licensure by reciprocity
35.4(105)	Licensure by verification
35.5(105)	Licensure by work experience in jurisdictions without licensure requirements

CHAPTER 36
PLUMBING AND MECHANICAL SYSTEMS BOARD—
PETITIONS FOR RULE MAKING

36.1(17A)	Petition for rule making
36.2(17A)	Briefs
36.3(17A)	Inquiries
36.4(17A)	Board consideration

CHAPTER 37
PHYSICAL PROTECTION OF CATEGORY 1 AND CATEGORY 2
QUANTITIES OF RADIOACTIVE MATERIAL

GENERAL PROVISIONS

37.1(136C)	Purpose and scope
37.2 to 37.4	Reserved
37.5(136C)	Definitions
37.6	Reserved
37.7(136C)	Communications
37.8 to 37.10	Reserved
37.11(136C)	Specific exemptions
37.12 to 37.20	Reserved
BACKGROUND INVESTIGATIONS AND ACCESS CONTROL PROGRAM	
37.21(136C)	Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material
37.22	Reserved
37.23(136C)	Access authorization program requirements
37.24	Reserved
37.25(136C)	Background investigations
37.26	Reserved
37.27(136C)	Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material
37.28	Reserved
37.29(136C)	Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials
37.30	Reserved
37.31(136C)	Protection of information
37.32	Reserved
37.33(136C)	Access authorization program review
37.34 to 37.40	Reserved

PHYSICAL PROTECTION REQUIREMENTS DURING USE

37.41(136C)	Security program
37.42	Reserved
37.43(136C)	General security program requirements
37.44	Reserved
37.45(136C)	LLEA coordination
37.46	Reserved
37.47(136C)	Security zones
37.48	Reserved
37.49(136C)	Monitoring, detection, and assessment
37.50	Reserved
37.51(136C)	Maintenance and testing

37.52	Reserved
37.53(136C)	Requirements for mobile devices
37.54	Reserved
37.55(136C)	Security program review
37.56	Reserved
37.57(136C)	Reporting of events
37.58 to 37.70	Reserved

PHYSICAL PROTECTION IN TRANSIT

37.71(136C)	Additional requirements for transfer of category 1 and category 2 quantities of radioactive material
37.72	Reserved
37.73(136C)	Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit
37.74	Reserved
37.75(136C)	Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material
37.76	Reserved
37.77(136C)	Advance notification of shipment of category 1 quantities of radioactive material
37.78	Reserved
37.79(136C)	Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment
37.80	Reserved
37.81(136C)	Reporting of events
37.82 to 37.100	Reserved

RECORDS

37.101(136C)	Form of records
37.102	Reserved
37.103(136C)	Record retention
37.104	Reserved
37.105(136C)	Inspections

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 Reserved

40.55(136C) Security and control of licensed or registered sources of radiation

40.56 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(136C) Disposal of certain byproduct material

40.78 and 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

PERMIT TO OPERATE IONIZING RADIATION PRODUCING MACHINES
OR ADMINISTER RADIOACTIVE MATERIALS

42.1(136C)	Purpose
42.2(136C)	Definitions
42.3(136C)	Exemptions

PERMIT APPLICATION AND RENEWAL

42.4(136C)	Permit application and renewal
42.5(136C)	Permit to practice as a general radiologic technologist
42.6(136C)	Permit to practice as a general nuclear medicine technologist
42.7(136C)	Permit to practice as a radiation therapist
42.8(136C)	Permit to practice as a radiologist assistant
42.9(136C)	Permit to practice as a limited radiologic technologist with categories of chest, spine, extremities, shoulder, pediatric
42.10(136C)	Permit to practice as an X-ray equipment operator in either podiatric radiography or bone densitometry (dual energy X-ray absorptiometry)
42.11	Reserved
42.12(136C)	Closed classification or category permits
42.13(136C)	Combining permits for an individual qualifying for permits in more than one classification
42.14 to 42.17	Reserved

PERMIT HOLDER SUBMISSION OF CONTINUING EDUCATION

42.18(136C)	Submission of proof of completion of continuing education by permit holder to meet continuing education requirements to renew or reinstate a permit
42.19 and 42.20	Reserved

ADMINISTRATIVE ITEMS AND GROUNDS FOR DISCIPLINARY ACTION

- 42.21(136C) Administrative items
- 42.22(136C) Rules of conduct, self-reporting requirements, and enforcement actions for all permit holders or applicants
- 42.23(136C) Procedures for demand for information, notice of proposed action, and orders for penalties, suspensions, revocations, and civil penalties for all individuals under this chapter
- 42.24 to 42.29 Reserved

FORMAL EDUCATION

- 42.30(136C) Requirements for formal education
- 42.31(136C) Standards for formal education for limited radiologic technologists
- 42.32(136C) Standards for formal education for X-ray equipment operators in podiatric radiography
- 42.33(136C) Standards for formal education for X-ray equipment operators in bone densitometry

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) Enforcement actions
- 43.6(136B) Reporting requirements
- 43.7(136B) Training and continuing education programs
- 43.8(136B,280) School district employee measurement training
- 43.9(136B) Exemptions
- 43.10(136B) Enforcement
- 43.11(136B) Penalties
- 43.12(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, PARTICLE ACCELERATORS FOR NONHUMAN USE, ANALYTICAL X-RAY EQUIPMENT, AND WELL-LOGGING

- 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(135) Purpose
- 51.2(135) Definitions
- 51.3(135) Persons included
- 51.4(135) Persons excluded
- 51.5(135) Dental screening components
- 51.6(135) Dental screening providers
- 51.7(135) Time line for valid dental screening
- 51.8(135) Proof of dental screening
- 51.9(135) Dental screening documentation
- 51.10(135) Assuring dental screening services
- 51.11(135) Records
- 51.12(135) Reporting
- 51.13(135) Iowa's dental screening database
- 51.14(135) Release of dental screening information
- 51.15(135) Referral requirements
- 51.16(135) Provider training

CHAPTER 52 VISION SCREENING

- 52.1(135) Purpose
- 52.2(135) Definitions
- 52.3(135) Persons included and persons excluded
- 52.4(135) Child vision screening components
- 52.5(135) Time line for valid vision screening
- 52.6(135) Proof of child vision screening
- 52.7(135) Child vision screening reporting

- 52.8(135) School requirements
- 52.9(135) Iowa's child vision screening database module and follow-up
- 52.10(135) Referral requirements

CHAPTER 53

Reserved

CHAPTER 54

CONCUSSION OR OTHER BRAIN INJURY RETURN-TO-PLAY PROTOCOL

- 54.1(280) Purpose
- 54.2(280) Definitions
- 54.3(280) Return-to-play protocol

CHAPTER 55

ADVISORY COUNCIL ON BRAIN INJURIES

- 55.1(135) Definitions
- 55.2(135) Mission of council
- 55.3(135) Council established
- 55.4(135) Officers
- 55.5(135) Duties of the council
- 55.6(135) Meetings
- 55.7(135) Minutes
- 55.8(135) Task forces
- 55.9(135) Expenses of advisory council members

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

CHAPTER 57

PLUMBING AND MECHANICAL SYSTEMS BOARD—
DECLARATORY ORDERS

- 57.1(17A) Petition for declaratory order
- 57.2(17A) Notice of petition
- 57.3(17A) Intervention
- 57.4(17A) Briefs
- 57.5(17A) Inquiries
- 57.6(17A) Service and filing of petitions and other papers
- 57.7(17A) Consideration
- 57.8(17A) Action on petition
- 57.9(17A) Refusal to issue order
- 57.10(17A) Contents of declaratory order—effective date
- 57.11(17A) Copies of orders
- 57.12(17A) Effect of a declaratory order
- 57.13(17A) Petition for eligibility determination

CHAPTER 58
PLUMBING AND MECHANICAL SYSTEMS BOARD—
AGENCY PROCEDURE FOR RULE MAKING

58.1(17A)	Applicability
58.2(17A)	Advice on possible rules before notice of proposed rule adoption
58.3(17A)	Public rule-making docket
58.4(17A)	Notice of proposed rule making
58.5(17A)	Public participation
58.6(17A)	Regulatory analysis
58.7(17A)	Fiscal impact statement
58.8(17A)	Time and manner of rule adoption
58.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
58.10(17A)	Exemptions from public rule-making procedures
58.11(17A)	Concise statement of reasons
58.12(17A)	Contents, style, and form of rule
58.13(17A)	Agency rule-making record
58.14(17A)	Filing of rules
58.15(17A)	Effectiveness of rules prior to publication
58.16(17A)	General statements of policy
58.17(17A)	Review by agency of rules

CHAPTER 59
PLUMBING AND MECHANICAL SYSTEMS BOARD—FAIR INFORMATION
PRACTICES AND PUBLIC RECORDS

59.1(17A,22)	Definitions
59.2(17A,22)	Statement of policy
59.3(17A,22)	Requests for access to records
59.4(17A,22)	Access to confidential records
59.5(17A,22)	Requests for treatment of a record as a confidential record and its withholding from examination
59.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
59.7(17A,22)	Consent to disclosure by the subject of a confidential record
59.8(17A,22)	Notice to suppliers of information
59.9(17A,22)	Disclosures without the consent of the subject
59.10(17A,22)	Routine use
59.11(17A,22)	Consensual disclosure of confidential records
59.12(17A,22)	Release to subject
59.13(17A,22)	Availability of records
59.14(17A,22)	Personally identifiable information
59.15(17A,22)	Other groups of records routinely available for public inspection
59.16(17A,22)	Applicability

CHAPTER 60
PLUMBING AND MECHANICAL SYSTEMS BOARD—
NONCOMPLIANCE REGARDING CHILD SUPPORT, NONPAYMENT OF STATE DEBT,
AND NONCOMPLIANCE REGARDING STUDENT LOAN REPAYMENT

60.1(252J)	Child support noncompliance
60.2(272D)	Nonpayment of state debt
60.3(272C)	Student loan repayment noncompliance

CHAPTER 61
STATE MECHANICAL CODE

- 61.1(105) Definitions
- 61.2(105) Adoption by reference
- 61.3(105) Amendments to International Mechanical Code
- 61.4(105) Hospitals and health care facilities
- 61.5(105) Enforcement

CHAPTER 62
PLUMBING AND MECHANICAL SYSTEMS BOARD—
MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE
MEMBERS

- 62.1(272C) Military service, veteran reciprocity, and spouses of active duty service members
- 62.2(272C) Spouses of military members

CHAPTERS 63 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)	Reallocation 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 and policy and procedure manual
73.4(135)	Definitions
73.5(135)	Staffing of contract agencies
73.6(135)	Certification of participants
73.7(135)	Food delivery

73.8(135)	Food package
73.9(135)	Education
73.10(135)	Health services
73.11(135)	Appeals and fair hearings—local agencies
73.12(135)	Right to appeal—participant
73.13(135)	Right to appeal—vendor
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)	WIC 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
73.25(135)	Confidentiality
73.26(135)	WIC online ordering project

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

FAMILY PLANNING SERVICES FUNDING PRIORITIZATION, RESTRICTIONS AND REPORTING

75.1(88GA,ch85)	Program explanation
75.2(88GA,ch85)	Definitions
75.3(88GA,ch85)	Distribution of grant funds
75.4(88GA,ch85)	Indirect funds restrictions—abortion
75.5(88GA,ch85)	Report requirement

CHAPTER 76

MATERNAL AND CHILD HEALTH PROGRAM

76.1(135)	Program overview
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
76.18 to 76.20	Reserved

MATERNAL AND CHILD HEALTH ADVISORY COUNCIL

76.21(135)	Purpose
76.22(135)	Mission
76.23(135)	Membership
76.24(135)	Officers
76.25(135)	Duties of the council
76.26(135)	Meetings
76.27(135)	Executive committee
76.28(135)	Committees

CHAPTER 77

LOCAL BOARDS OF HEALTH

77.1(137)	Purpose
77.2(137)	Definitions
77.3(137)	Local boards of health—roles and responsibilities
77.4(137)	Organization of local boards of health
77.5(137)	Operation of local boards of health
77.6(137)	Expenses of local board of health members
77.7(137)	Dissolution of city boards
77.8(137)	Request to form district board of health
77.9(137)	Review, approval or denial of district board of health formation
77.10(137)	Adding to a district board of health
77.11(137)	Withdrawal from a district board of health

CHAPTER 78

PERSONAL RESPONSIBILITY EDUCATION PROGRAM AND TITLE V STATE SEXUAL RISK AVOIDANCE EDUCATION GRANT PROGRAM FUNDING AND RESTRICTIONS

78.1(88GA,HF766)	Purpose
78.2(88GA,HF766)	Definitions
78.3(88GA,HF766)	Distribution of grant funds

CHAPTER 79

Reserved

CHAPTER 80

LOCAL PUBLIC HEALTH SERVICES

80.1(135)	Purpose
80.2(135)	Definitions
80.3(135)	Contractor assurances
80.4(135)	Utilization of LPHS contract funding
80.5(135)	LPHS funds

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

CHAPTERS 82 to 85

Reserved

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)
89.2(135L)
89.3(135L)
89.4 to 89.10

Title
Purpose and scope
Definitions
Reserved

DECISION-MAKING ASSISTANCE PROGRAM

89.11(135L)
89.12(135L)

89.13 to 89.20

Purpose
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
Reserved

NOTIFICATION PROCESS

89.21(135L)
89.22(135L)
89.23(135L)
89.24 and 89.25
89.26(135L)

Notification of parent prior to the performance of abortion on a pregnant minor
Exceptions to notification of parent
Physician compliance
Reserved
Fraudulent practice

CHAPTER 90
IOWA CHILD DEATH REVIEW TEAM

90.1(135)
90.2(135)
90.3(135)
90.4(135)
90.5(135)
90.6(135)
90.7
90.8(135)
90.9(135)
90.10(135)
90.11(135)

Purpose
Definitions
Agency
Membership
Officers
Meetings
Reserved
Team responsibilities
Liaisons
Confidentiality and disclosure of information
Immunity and liability

CHAPTER 91
IOWA DOMESTIC ABUSE DEATH REVIEW TEAM

91.1(135)
91.2(135)
91.3(135)
91.4(135)
91.5(135)
91.6(135)
91.7(135)
91.8(135)
91.9(135)
91.10(135)
91.11(135)

Purpose
Definitions
Agency
Membership
Officers
Meetings
Expenses of team members
Team duties and responsibilities
Liaisons
Confidentiality and disclosure of information
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
Reserved

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
VITAL RECORDS: GENERAL ADMINISTRATION

95.1(144)	Definitions
95.2(144)	Vital records and statistics
95.3(144)	Forms—property of department
95.4(144)	Information by others
95.5(144)	Handling of vital records
95.6(144)	Fees
95.7(144)	General public access of vital records in the custody of the county registrar
95.8(144)	Direct tangible interest in and entitlement to a vital record
95.9(144)	Search and issuance of a certified copy of a vital record
95.10(144)	Search and issuance for genealogy or family history
95.11(144)	Registrars' responsibility for maintenance of confidentiality
95.12(144)	Disclosure of data
95.13(144)	Preparation of certified copies
95.14(144)	Access to original certificate of birth prior to adoption
95.15(144)	Certificate of nonviable birth
95.16(144)	Cancellation of fraudulent records
95.17(144)	Unlawful acts
95.18(144)	Enforcement assistance

CHAPTER 96
BIRTH REGISTRATION

96.1(144)	Definitions
96.2(144)	Forms—property of department
96.3(144)	Standard birth registration—up to seven days
96.4(144)	Standard birth registration—seven days to one year
96.5(144)	Birthing institutions

96.6(144)	Non-birthing institutions
96.7(144)	Non-institution birth
96.8(144)	Gestational surrogate arrangement birth registration
96.9(144)	Foundling birth registration
96.10(144)	Newborn safe haven registration
96.11(144)	Birth registration following a foreign-born adoption
96.12(144)	Birth registration fees
96.13(144)	Fee collection
96.14(144)	Waivers
96.15(144)	Fee deposit
96.16(144)	Responsibilities of institutions
96.17(144)	Responsibility for births occurring in non-institutions and non-birthing institutions
96.18(144)	Delayed birth registration—one year or more after event

CHAPTER 97

DEATH REGISTRATION AND DISPOSITION OF DEAD HUMAN BODIES

97.1(144)	Definitions
97.2(144)	Forms—property of department
97.3(144)	Standard registration of death—up to one year
97.4(144)	Standard registration of fetal death—up to one year
97.5(144)	Preparation of the certificate of death or fetal death
97.6(144)	Medical certification of death
97.7(144)	Medical certification of fetal death
97.8(144)	Medical certifier
97.9(144)	Report of autopsy findings
97.10(144)	Extension of time
97.11(144)	Removal of a dead human body or fetus
97.12(144)	Burial-transit permit
97.13(144)	Transportation and disposition of a dead human body or fetus
97.14(144)	Disinterment permits
97.15(144)	Delayed death registration—one year or more after event
97.16(144)	Registration of presumptive death
97.17(144)	Release or final disposition of a dead human body or fetus by an institution
97.18(144)	Additional record by funeral director

CHAPTER 98

MARRIAGE REGISTRATION

98.1(144,595)	Definitions
98.2(144,595)	Forms—property of department
98.3(144,595)	Standard registration of marriage—up to one year
98.4(144,595)	Application for a license to marry in Iowa
98.5(144,595)	License to marry
98.6(144, 595)	Certificate of marriage
98.7(144,595)	Delayed registration of marriage—one year or more after date of event
98.8(144,595)	Dissolution of marriage or annulment

CHAPTER 99

VITAL RECORDS MODIFICATIONS

99.1(144)	Definitions
99.2(144)	Forms—property of department
99.3(144)	Forms used in the establishment of new records
99.4(144)	Corrections of minor error in vital record—within one year of event

99.5(144)	Amendment of certificate of live birth to add first or middle given name—within one year of event
99.6(144)	Amendment of vital record—one year or more after the event
99.7(144)	Method of amendment of vital records
99.8(144)	Correction or amendment of same item more than once
99.9(144)	Other amendments to certificate of live birth
99.10(144)	Correction or amendment to medical certification of cause of death
99.11(144)	Correction or amendment to a certificate of marriage
99.12(144)	Correction to a report of dissolution of marriage or annulment
99.13(144)	Minimum information required to establish a new certificate of live birth
99.14(144)	Establishment of new certificate of live birth following adoption
99.15(144)	Establishment of new certificate of live birth following a birth by gestational surrogate arrangement
99.16(144)	Certificate of live birth following voluntary paternity affidavit
99.17(144)	Certificate of live birth following court determination of paternity
99.18(144)	Certificate of live birth following rescision of paternity affidavit or disestablishment of paternity
99.19(144)	Certificate of live birth following court-ordered change of name
99.20(144)	Certificate of live birth following sex designation change

CHAPTER 100

VITAL RECORDS REGISTRIES AND REPORTS

100.1(144)	Definitions
100.2(144)	Forms—property of department
100.3(144)	Declaration of paternity registry established
100.4(144)	Mutual consent voluntary adoption registry established
100.5(144)	Statistical report of termination of pregnancy report

CHAPTERS 101 to 106

Reserved

CHAPTER 107

BOARD-CERTIFIED BEHAVIOR ANALYST AND BOARD-CERTIFIED ASSISTANT BEHAVIOR ANALYST (BCBA/BCaBA) GRANTS PROGRAM

107.1(135)	Scope and purpose
107.2(135)	Definitions
107.3(135)	Eligibility criteria
107.4(135)	Priority in grant awards
107.5(135)	Amount of a grant
107.6(135)	Use of funds
107.7(135)	Review process
107.8(135)	Reporting

CHAPTER 108

MEDICAL RESIDENCY TRAINING STATE MATCHING GRANTS PROGRAM

108.1(135)	Scope and purpose
108.2(135)	Definitions
108.3(135)	Eligibility criteria—establishment or expansion
108.4(135)	Eligibility criteria—support
108.5(135)	Amount of grant
108.6(135)	Application and review process

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
- 109.12 and 109.13 Reserved
- 109.14(135M) Prescription drug donation repository in disaster emergencies

CHAPTER 110

CENTER FOR RURAL HEALTH
AND PRIMARY CARE

- 110.1(135) Purpose and scope
- 110.2(135,135B) Definitions
- 110.3(135) Responsibilities of the center
- 110.4 to 110.10 Reserved

PRIMECARRE HEALTH CARE WORKFORCE AND COMMUNITY SUPPORT GRANT PROGRAM

- 110.11(135) Purpose
- 110.12 to 110.15 Reserved

PRIMECARRE PRIMARY CARE PROVIDER LOAN REPAYMENT PROGRAM

- 110.16(135) Purpose

CHAPTER 111

IOWA NEEDS NURSES NOW INFRASTRUCTURE ACCOUNT

- 111.1(135) Scope and purpose
- 111.2(135) Definitions
- 111.3(135) Eligibility and criteria
- 111.4(135) Review process
- 111.5(135) Performance standards
- 111.6(135) Appeals

CHAPTER 112

Reserved

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) Public health response team
- 113.6(135) Legal and other protections
- 113.7(135) Reporting requirements and duties

CHAPTER 114
PREPAREDNESS ADVISORY COMMITTEE

114.1(135)	Definitions
114.2(135)	Purpose
114.3(135)	Appointment and membership
114.4(135)	Officers
114.5(135)	Meetings
114.6(135)	Subcommittees
114.7(135)	Expenses of preparedness advisory committee voting members
114.8(135)	Committee composition

CHAPTERS 115 to 121
Reserved

CHAPTER 122
ANATOMICAL GIFT PUBLIC AWARENESS AND TRANSPLANTATION FUND

122.1(142C)	Scope and purpose
122.2(142C)	Definitions
122.3(142C)	State agencies or nonprofit legal entities
122.4(142C)	Hospitals
122.5(142C)	Transplant recipients and donors

CHAPTER 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
Reserved

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 and membership
- 130.4(147A) Officers
- 130.5(147A) Meetings
- 130.6(147A) Subcommittees
- 130.7 Reserved
- 130.8(147A) Council composition

CHAPTER 131

EMERGENCY MEDICAL SERVICES—PROVIDERS—INITIAL CERTIFICATION—RENEWAL
AND REACTIVATION—AUTHORITY—COMPLAINTS AND INVESTIGATIONS

- 131.1(147A) Purpose
- 131.2(147A,147D,272C) Definitions
- 131.3(147A,272C) Initial certification
- 131.4(147A) Background check results
- 131.5(147A) Authority
- 131.6(147A) Renewal standards, reactivation procedures, fees, and continuing education
- 131.7(147A,272C) Discipline—denial, citation and warning, probation, suspension, or revocation of certificates or renewal
- 131.8(147A) Certification denial
- 131.9(147A) Emergency adjudicative proceedings
- 131.10(147A) Complaints, investigations and appeals

CHAPTER 132

EMERGENCY MEDICAL SERVICES—SERVICE PROGRAM AUTHORIZATION

- 132.1(147A) Definitions
- 132.2(147A) Service program—authorization and renewal procedures and inspections
- 132.3(147A) Service program operations
- 132.4(147A) Waivers
- 132.5(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal

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 requirements
 137.3(147A) Continuing trauma education requirements
 137.4(147A) Offenses and penalties

CHAPTER 138
TRAUMA SYSTEM ADVISORY COUNCIL

- 138.1(147A) Definitions
 138.2(147A) Purpose and duties
 138.3(147A) Appointment and membership
 138.4(147A) Officers
 138.5(147A) Meetings
 138.6(147A) Subcommittees
 138.7(147A) Confidentiality
 138.8(147A) Documentation
 138.9 Reserved
 138.10(147A) Council composition

CHAPTER 139
EMERGENCY MEDICAL SERVICES—TRAINING PROGRAMS—STUDENTS—COMPLAINTS
AND INVESTIGATIONS

- 139.1(147A) Purpose
 139.2(147A) Definitions
 139.3(147A) Initial application, renewal application, inspection and approval
 139.4(147A) Training program standards, student requirements and waivers
 139.5(147A) Out-of-state training programs
 139.6(147A) Failure to comply with rules
 139.7(147A) Temporary waivers
 139.8(147A) Continuing education providers—approval, record keeping and inspection

- 139.9(147A) Discipline—denial, citation and warning, probation, suspension, or revocation of training program approval or renewal
 139.10(147A) Complaints, investigations and appeals

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—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 MAINTENANCE

- 143.1(613) Purpose
 143.2(613) Definition
 143.3(613) 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 waivers
 144.8(147A) Transport options for air medical services

CHAPTER 145
IOWA PHYSICIAN ORDERS FOR SCOPE OF TREATMENT

- 145.1(144D) Definitions
- 145.2(144D) Purpose
- 145.3(144D) Responsibilities of the department

CHAPTER 146
STROKE CARE REPORTING

- 146.1(135) Purpose
- 146.2(135) Definitions
- 146.3(135) Stroke care reporting
- 146.4(135) Method and frequency of reporting
- 146.5(135) Confidentiality
- 146.6(135) Penalties and enforcement

CHAPTERS 147 to 149
Reserved

CHAPTER 150
IOWA REGIONALIZED SYSTEM OF PERINATAL HEALTH CARE

- 150.1(135) Purpose and scope
- 150.2(135) Definitions
- 150.3(135) Perinatal guidelines advisory committee
- 150.4(135) Duties of statewide perinatal care team
- 150.5(135) Duties of the department
- 150.6(135) Maternal and neonatal levels of care—categorization and verification
- 150.7(135) Levels of maternal care
- 150.8(135) Maternal-fetal transport—all levels
- 150.9(135) Levels of neonatal care
- 150.10(135) Grant or denial of certificate of verification; and offenses and penalties
- 150.11(135) Prohibited acts
- 150.12(135) 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
MEDICAL CANNABIDIOL PROGRAM

- 154.1(124E) Definitions
- REGISTRATION CARDS
- 154.2(124E) Health care practitioner certification—duties and prohibitions
 - 154.3(124E) Medical cannabidiol registration card—application and issuance to patient
 - 154.4(124E) Medical cannabidiol registration card—application and issuance to primary caregiver
 - 154.5 Reserved
 - 154.6(124E) Denial and cancellation
 - 154.7(124E) Appeal
 - 154.8(124E) Duplicate card
 - 154.9(124E) Renewal
 - 154.10(124E) Confidentiality
 - 154.11 Reserved
 - 154.12(124E) Fees
 - 154.13(124E) Use of medical cannabidiol—smoking prohibited
 - 154.14(124E) Allowable forms of medical cannabidiol
 - 154.15 Reserved
- MANUFACTURING
- 154.16(124E) Duties of the department
 - 154.17(124E) Manufacturer operations
 - 154.18(124E) Security requirements
 - 154.19(124E) Location
 - 154.20(124E) Advertising and marketing
 - 154.21(124E) Packaging and labeling
 - 154.22(124E) Transportation of medical cannabidiol and plant material
 - 154.23(124E) Disposal of medical cannabidiol and plant material
 - 154.24(124E) Record-keeping requirements
 - 154.25(124E) Production requirements
 - 154.26(124E) Quality assurance and control
 - 154.27(124E) Supply and inventory
 - 154.28(124E) Inspection by department or independent consultant
 - 154.29(124E) Assessment of penalties
 - 154.30(124E) Suspension or revocation of a manufacturer license
 - 154.31(124E) Closure of operations

154.32 to 154.39 Reserved

DISPENSING

154.40(124E) Duties of the department
 154.41(124E) Dispensary operations
 154.42(124E) Security requirements
 154.43(124E) Location
 154.44(124E) Advertising and marketing
 154.45(124E) Storage
 154.46(124E) Dispensing
 154.47(124E) Transportation of medical cannabidiol
 154.48(124E) Disposal of medical cannabidiol
 154.49(124E) Record-keeping requirements
 154.50(124E) Quality assurance and control
 154.51(124E) Inventory
 154.52(124E) Inspection by department or independent consultant
 154.53(124E) Assessment of penalties
 154.54(124E) Suspension or revocation of a dispensary license
 154.55(124E) Closure of operations
 154.56 to 154.59 Reserved

MEDICAL CANNABIDIOL BOARD

154.60(124E) Purpose and duties of board
 154.61(124E) Organization of board and proceedings
 154.62(124E) Official communications
 154.63(124E) Office hours
 154.64(124E) Public meetings
 154.65(124E) Petitions for the addition or removal of medical conditions, medical treatments
 or debilitating diseases
 154.66 to 154.68 Reserved

LABORATORY TESTING

154.69(124E) Requirements of the department
 154.70(124E) Requirements of a laboratory
 154.71(124E) Requirements of a manufacturer
 154.72(124E) Content testing
 154.73(124E) Reporting requirements
 154.74(124E) Record-keeping requirements
 154.75(124E) Quality control
 154.76(124E) Security requirements

CHAPTER 155

LICENSURE STANDARDS FOR SUBSTANCE USE DISORDER AND
 PROBLEM GAMBLING TREATMENT PROGRAMS

155.1(125,135) Definitions
 155.2(125,135) Licensing
 155.3(125,135) Types of licenses
 155.4(125,135) Nonassignability
 155.5(125,135) Application procedures
 155.6(125,135) Technical assistance
 155.7(125,135) Inspection of applicants
 155.8(125,135) License—approval
 155.9(125,135) Written corrective action plan
 155.10(125,135) Grounds for denial of license

- 155.11(125,135) Denial, suspension or revocation of 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) Issuance of a license after denial, suspension or revocation
- 155.16(125,135) Complaints and investigations
- 155.17(125,135) License revision
- 155.18(125,135) Deemed status
- 155.19(125,135) Funding
- 155.20(125,135) Inspection
- 155.21(125,135) General standards for all programs
- 155.22(125,135) Inpatient and residential program facilities
- 155.23(125,135) Specific standards for inpatient and residential programs
- 155.24(125,135) Specific standards for inpatient and residential programs licensed to provide services to juveniles
- 155.25(125,135) Specific standards for substance use assessment and OWI evaluation-only programs
- 155.26 to 155.33 Reserved
- 155.34(125,135) Specific standards for enhanced treatment services
- 155.35(125,135) Specific standards for opioid treatment programs

TUBERCULOSIS (TB) SCREENING: HEALTH CARE WORKERS AND RESIDENTS

- 155.36(125,135) Purpose
- 155.37(125,135) Definitions
- 155.38(125,135) Tuberculosis screening of staff and residents

CHAPTER 156
CONSUMABLE HEMP PRODUCTS

- 156.1(204) Definitions
- 156.2(204) Registration and posting
- 156.3(204) Testing requirements and documentation
- 156.4(204) Packaging and labeling requirements
- 156.5(204) Applicability of other laws and regulations
- 156.6(204) Prohibitions
- 156.7(204) Violations and enforcement
- 156.8(204) Denial, suspension, or revocation of registration
- 156.9(204) Inspection and access to records
- 156.10(204) Public examination of records
- 156.11(204) Appeals

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	Reserved
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	Reserved
177.8(76GA,ch1212)	Address and specification for data submissions

CHAPTER 178
Reserved

CHAPTER 179
COLLECTION OF DELINQUENT DEBTS

179.1(8A)	Authorization
179.2(8A)	Definitions
179.3(8A)	Liability file
179.4(8A)	Notification of offset
179.5(8A)	Request to divide a jointly or commonly owned right to payment
179.6(8A)	Appeal process
179.7(8A)	Notice of offset

CHAPTERS 180 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
Reserved

CHAPTER 196
MILITARY SERVICE, VETERAN RECIPROCITY, AND SPOUSES OF ACTIVE DUTY SERVICE
MEMBERS

196.1(272C)	Definitions
196.2(272C)	Military education, training, and service credit
196.3(272C)	Veteran and active duty military spouse reciprocity

CHAPTERS 197 to 201
Reserved

CHAPTER 202
CERTIFICATE OF NEED PROGRAM

202.1(135)	Definitions
202.2(135)	Letter of intent
202.3(135)	Determination of reviewability
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
202.16(135)	Reporting requirements

CHAPTER 203

STANDARDS FOR CERTIFICATE OF NEED REVIEW

203.1	Reserved
203.2(135)	Cardiac catheterization and cardiovascular surgery standards
203.3(135)	Radiation therapy standards
203.4(135)	Computerized tomography standards
203.5(135)	Long-term care
203.6 and 203.7	Reserved
203.8(135)	Financial and economic feasibility
203.9 to 203.11	Reserved
203.12(135)	Magnetic resonance imaging services standards
203.13(135)	Positron emission tomography services standards

CHAPTER 175
FAIR INFORMATION PRACTICES AND PUBLIC RECORDS

641—175.1(17A,22) Definitions. For purposes of this chapter, the following definitions apply:

“*Agency*” or “*department*” means the Iowa department of public health.

“*Confidential record*” means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the department is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

“*Custodian*” means the department or a person lawfully delegated authority by the department to act for the department in implementing Iowa Code chapter 22.

“*Open record*” means a record other than a confidential record.

“*Personally identifiable information*” means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

“*Record*” means the whole or a part of a “public record” as defined in Iowa Code section 22.1 that is owned by or in the physical possession of the department.

“*Record system*” means any group of records under the control of the department from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

641—175.2(17A,22) Statement of policy. The purpose of this chapter is to facilitate broad public access to open records and to facilitate sound department determinations with respect to the maintenance of confidential records and the implementation of the fair information practices Act. The department is committed to the policies set forth in Iowa Code chapter 22, and department staff shall cooperate with members of the public in implementing the provisions of that chapter.

641—175.3(17A,22) Requests for access to records.

175.3(1) Location of record. A request for access to a record should be directed to the division where the record is maintained. If the location of the record is not known by the requester, the request shall be directed to the Iowa Department of Public Health, Public Information Officer, Lucas State Office Building, Des Moines, Iowa 50319-0075, Attention: Record Request. The department will forward the request to the appropriate person.

175.3(2) Office hours. Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

175.3(3) Request for access. Requests for access to open records may be made in writing, in person, by telephone, or by electronic means. A person requesting a record shall identify the particular record sought by name or description in order to facilitate the location of the record. A person requesting a record by mail, telephone, or by electronic means shall include the name, address, and telephone number of the person requesting the information in order to facilitate delivery of the record. A person shall not be required to give a reason for requesting an open record.

175.3(4) Response to requests. The custodian shall provide prompt access to an open record upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. The custodian may delay access to an open record for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order.

175.3(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from the department files. The custodian or a designee of the custodian shall supervise examination and copying of department records. Records shall be protected from damage and disorganization.

175.3(6) *Copying.* A reasonable number of copies of an open record may be made in the department's office. If photocopy equipment is not available in the department office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

175.3(7) *Fees.*

a. When charged. The department may charge a reasonable fee in connection with the examination or copying of records. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

b. Copying and postage costs. Price schedules for published materials and for photocopies of records supplied by the department shall be prominently posted in department offices. Copies of records may be made by or for members of the public on department photocopy machines or from electronic storage systems at cost as determined and posted in department offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

c. Search and supervisory fee. An hourly fee may be charged for actual department expenses in searching for and supervising the examination and copying of requested records. The fee shall be based upon the actual costs incurred. The department shall post the hourly fees to be charged in routine cases for search and supervision of records. Except as provided in Iowa Code section 144.46, no fee shall be charged if the records are not made available for inspection, or if the time required does not exceed one hour in duration, or if the time required for the search was the result of department error or record-keeping problems. Iowa Code section 144.46 specifically allows for fees for vital record searches when the record is not copied or is not found, and this Iowa Code section is implemented by 641—96.4(144).

d. Advance deposits.

(1) Fulfillment of a request for a copy of a public record may be contingent upon receipt of payment of expenses to be incurred in fulfilling the request, and such estimated expenses shall be communicated to the requester prior to fulfillment of the request. When the estimated total fee chargeable under this subrule exceeds \$25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require payment of the prior fee and advance payment of the full amount of any estimated fee before the custodian processes a new request from that requester.

641—175.4(17A,22) Access to confidential records. Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to particular persons under certain limited circumstances if the person is legally entitled to the record. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 641—175.3(17A,22).

175.4(1) *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

175.4(2) *Requests.* The custodian may require a request to examine and copy a confidential record to be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

175.4(3) *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record,

the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose. The department is not required to provide notification or an opportunity to seek an injunction under this subrule and retains sole discretion as to whether to pursue such action.

175.4(4) *Requests denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

- a. The name and title or position of the custodian responsible for the denial; and
- b. A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial.

175.4(5) *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

[Editorial change: IAC Supplement 6/28/23]

641—175.5(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination. The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order to refuse to disclose that record to members of the public.

175.5(1) *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order authorizes the custodian to treat the record as a confidential record may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

175.5(2) *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the department by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

175.5(3) *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the department does not request that it be withheld from public inspection under Iowa Code sections 22.7(3) and 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

175.5(4) *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record is filed or when the custodian receives a request for access to the record by a member of the public.

175.5(5) *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been

deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

175.5(6) *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by a requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8 or other applicable provision of law. However, such a record shall not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable ground to justify the treatment of that record as a confidential record. The custodian shall notify requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

641—175.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into a record containing personally identifiable information pertaining to that person. However, a person who is a subject of such a record shall not be authorized to alter the original copy of that record or to expand the official record of any agency proceeding. A requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the division in which the record is maintained. The request to review such a record or the written statement of such a record of additions, dissents, or objections must be dated and signed by requester, and shall include the current address and telephone number of the requester or the requester's representative.

641—175.7(17A,22) Consent to disclosure by the subject of a confidential record. Except as otherwise provided by law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom they may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. Appearance of counsel before the department on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the department to disclose records about that person to the person's attorney.

641—175.8(17A,22) Notice to suppliers of information. When the department requests a person to supply information about that person, the department may notify the person of the use that will be made of the information, which persons outside the department might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

641—175.9(17A,22) Disclosures without the consent of the subject.

175.9(1) The department shall routinely disclose open records without the consent of the subject.

175.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

- a.* For a routine use as defined in rule 641—175.10(17A,22) or in the notice for a particular record system.
- b.* To a recipient who has provided the department with advance written assurance that the record will be used solely as a statistical research or reporting record. The department shall not release confidential data or information pursuant to this chapter unless the department and the recipient have executed an agreement which includes the conditions under which the confidential data or information may be used and a restriction on the further disclosure of the data or information.
- c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil, administrative, or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the department specifying the record desired and the law enforcement activity for which the record is sought.
- d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.
- e.* To the legislative services agency under Iowa Code section 2A.3.
- f.* Disclosures in the course of employee disciplinary proceedings.
- g.* In response to a court order or subpoena.
- h.* To the office of citizens' aide pursuant to Iowa Code section 2C.9.

[Editorial change: IAC Supplement 6/28/23]

641—175.10(17A,22) Routine use.

175.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject for a purpose which is compatible with the purpose for which the record was collected. “Routine use” includes disclosures required or authorized by statute or rule.

175.10(2) To the extent allowed by law, the following uses are considered routine uses of all department records:

- a.* Disclosure to those officers, employees, and agents of the department who have a need for the record in the performance of their duties.
- b.* Disclosure to employees of federal, state and local agencies and other researchers for purposes of bona fide research. The department shall not release data or information pursuant to this paragraph unless the department and the researcher have executed an agreement which includes the conditions under which the confidential data or information may be used and restrictions on further disclosure of the data or information.
- c.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.
- d.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the department.
- e.* Transfers of information within the department, to other state or federal agencies, or to local units of government as necessary to administer the program for which the information is collected or as necessary to administer a program within the other governmental agency. Confidential information transferred within the department or provided to other agencies pursuant to this paragraph shall continue to maintain its confidential status and shall not be rereleased by the receiving agency.
- f.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the department is operating a program lawfully.
- g.* Any disclosure specifically authorized by the statute or rule under which the record was collected or maintained.

641—175.11(17A,22) Consensual disclosure of confidential records.

175.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to department disclosure of confidential records as provided in rule 641—175.7(17A,22).

175.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the department may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[Editorial change: IAC Supplement 6/28/23]

641—175.12(17A,22) Release to subject.

175.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 641—175.6(17A,22). However, the department need not release the following records to the subject:

a. The identity of a person providing information to the department need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code.

d. As otherwise authorized by law.

175.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the department shall take reasonable steps to protect confidential information relating to another subject.

[Editorial change: IAC Supplement 6/28/23]

641—175.13(17A,22) Availability of records.

175.13(1) *General.* Department records are open for public inspection and copying subject to supervision unless otherwise provided by statute or rule.

175.13(2) *Confidential records.* The following records shall be withheld from public inspection. Records are listed by department division and include the legal authority for withholding the record from public inspection.

a. Division of acute disease prevention and emergency response.

(1) Records which identify a person infected with or exposed to a reportable disease or other disease or health condition collected pursuant to Iowa Code chapter 139A, and maintained as confidential pursuant to Iowa Code section 139A.3(2) "b" and Iowa Code section 22.7(16).

(2) Records which identify a business involved in a reportable disease or other disease or health condition investigation collected pursuant to Iowa Code chapter 139A, and maintained as confidential pursuant to Iowa Code section 139A.3(2) "c." The identity of a business may be disclosed pursuant to this authority only if the state epidemiologist or the director of the department determines such a release of information necessary for the protection of the health of the public.

(3) Records which identify a person infected with or exposed to a reportable sexually transmitted disease or infection collected pursuant to Iowa Code chapter 139A, and maintained as confidential pursuant to Iowa Code section 139A.30 and Iowa Code section 22.7(16).

(4) Records which identify a person infected with or exposed to HIV/AIDS collected pursuant to Iowa Code chapter 141A, and maintained as confidential pursuant to Iowa Code section 141A.9.

(5) Data and records received or developed by the trauma system evaluation and quality improvement committee, including patient and emergency medical care service program identifying information, collected pursuant to Iowa Code chapter 147A, and maintained as confidential pursuant to Iowa Code section 147A.25.

(6) Data collected by and furnished to the statewide trauma registry which identifies a patient or former patient collected pursuant to Iowa Code section 147A.26, and maintained as confidential pursuant to Iowa Code section 147A.26.

(7) All information in complaint and investigative files maintained by the bureau of emergency medical services collected pursuant to Iowa Code chapter 147A, and maintained as confidential pursuant to Iowa Code section 272C.6(4), except that the information may be released to the provider or the service once a disciplinary proceeding has been initiated by the filing of a notice of proposed action. A notice of proposed action and final agency action are public documents.

(8) Immunization information which identifies a patient maintained on the statewide immunization registry collected pursuant to Iowa Code section 22.7(2), and maintained as confidential pursuant to Iowa Code section 22.7(2) and 641—subrule 7.11(4). The department's rules regarding sharing of immunization information are contained at 641—7.12(22).

b. Division of administration and professional licensure.

(1) Vital records maintained pursuant to Iowa Code chapter 144, including records of births, deaths, fetal deaths, adoptions, marriages, divorces, annulments and related data and correspondence, and maintained as confidential pursuant to Iowa Code section 144.43.

(2) Licensing and disciplinary records of the professional licensing boards may be confidential in accordance with Iowa Code section 272C.6(4) and 645—10.13(17A,22).

c. Division of behavioral health.

(1) Records which identify a person named in a report to the central registry for brain or spinal cord injuries collected pursuant to Iowa Code section 135.22, and maintained as confidential pursuant to Iowa Code section 135.22 and 641—21.6(135).

(2) Information contained in a complaint regarding a licensed substance abuse program collected pursuant to Iowa Code chapter 125, and maintained as confidential pursuant to Iowa Code sections 22.7(2), 22.7(18), and 125.37. Investigative reports, written plans of corrective action, and all notices and orders issued by the board of health shall refer to clients and patients by number and shall not include any other client or patient identifying information. Investigative reports, written plans of corrective action, and all notices and orders issued by the board of health shall be available to the public as open records in accordance with 641—subrule 155.16(5).

(3) Records which identify the victim of a domestic abuse death collected or maintained by the Iowa domestic abuse death review team pursuant to Iowa Code section 135.110, and maintained as confidential pursuant to Iowa Code section 135.111.

d. Division of environmental health.

(1) Drafts of proposed regulations released to the department from the federal government which constitute essential information needed by the department to ensure compliance with federal regulations collected pursuant to Iowa Code chapter 136C, and maintained as confidential pursuant to Iowa Code section 22.9 and 641—subrule 38.7(2).

(2) Applications and documents submitted to the department pursuant to Iowa Code chapter 136C, which may be maintained as confidential pursuant to 641—subrule 39.4(24) if disclosure of their contents is not required in the public interest and would adversely affect the interest of a person concerned.

(3) Records which identify a person infected with or exposed to a reportable disease or other disease or health condition, including lead and other heavy metal poisonings, collected pursuant to Iowa Code chapter 139A, and maintained as confidential in accordance with Iowa Code section 139A.3(2) "b."

(4) Records which identify a business involved in a reportable disease or other disease or health condition investigation, including a lead or other heavy metal poisoning investigation, collected pursuant to Iowa Code chapter 139A, and maintained as confidential pursuant to Iowa Code section 139A.3(2) "c." The identity of a business may be disclosed pursuant to this authority only if the state epidemiologist or the director of the department determines such a release of information necessary for the protection of the health of the public or if the release is required by federal, state, or local law.

e. Division of health promotion and chronic disease prevention.

(1) All medical, health and nutrition information which identifies a WIC program participant collected pursuant to federal law and Iowa Code chapter 135, and maintained as confidential in accordance with 7 CFR 246, Iowa Code section 22.7(2), and 641—subrule 73.7(7).

(2) Records which identify the victim of a child death collected or maintained by the Iowa child death review team pursuant to Iowa Code section 135.43, and maintained as confidential pursuant to Iowa Code section 135.43.

(3) Records which identify a child subject to a newborn and infant hearing screening collected pursuant to Iowa Code section 135.131, and maintained as confidential pursuant to Iowa Code section 135.131 and 641—3.10(80GA,ch102).

(4) Records which identify a person named in a report to the central registry for congenital and inherited disorders collected pursuant to Iowa Code section 136A.7, and maintained as confidential in accordance with Iowa Code section 136A.7 and 641—subrule 4.3(7).

(5) Records which identify a person infected with or exposed to a reportable disease or other disease or health condition, including a congenital or inherited disorder, collected pursuant to Iowa Code chapter 139A, and maintained as confidential pursuant to Iowa Code section 139A.3(2) “b.”

f. Sections which govern all divisions.

(1) Records which contain medical information collected pursuant to Iowa Code chapters 135, 139A, and 147A, and maintained as confidential pursuant to Iowa Code section 22.7(2).

(2) Records collected from any person, hospital, or other organization related to the condition and treatment of any person to be used in the course of any study for the purpose of reducing morbidity or mortality collected pursuant to Iowa Code section 135.40, and maintained as confidential pursuant to Iowa Code sections 135.40, 135.41, and 135.42.

(3) Records concerning security procedures or emergency preparedness developed and maintained by the department or other federal or state agency for the protection of governmental employees, visitors to the department, persons in the care, custody, or under the control of the department, or property under the jurisdiction of the department, if disclosure could reasonably be expected to jeopardize such employees, visitors, or property. Pursuant to Iowa Code section 22.7(50), the department has adopted a policy which identifies all specific records or classes of records to which this protection applies.

175.13(3) Minutes of closed meetings of a government body shall be kept confidential in accordance with Iowa Code section 21.5.

175.13(4) Identifying details in final orders, decisions and opinions shall be kept confidential to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) “e.”

175.13(5) Portions of department staff manuals, instructions or other statements issued shall be kept confidential when such documents set forth criteria or guidelines to be used by department staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- a. Enable law violators to avoid detection;
- b. Facilitate disregard of requirements imposed by law; or
- c. Give a clearly improper advantage to persons who are in an adverse position to the department.

175.13(6) Records which constitute attorney work product or attorney-client communications or which are otherwise privileged shall be kept confidential. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 1.503, Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

175.13(7) Records exempted from public inspection under Iowa Code section 22.7 or any other provision of law shall be kept confidential.

641—175.14(17A,22) Personally identifiable information—public health programs. Transferred to 441—9.20(17A,22), IAC Supplement 6/28/23.

641—175.15(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 641—175.2(17A,22). These records

are routinely available to the public. However, the department's files of these records may contain confidential information as discussed in rule 641—175.13(17A,22). The records listed may contain information about individuals. All records are stored on paper unless otherwise noted.

175.15(1) Rule making. Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4.

175.15(2) Council and commission records. Agendas, minutes, and materials presented to the councils, committees and commissions listed below, by division, are available from the department, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5(4) or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3.

- a. Division of acute disease prevention and emergency response.
 - (1) EMS advisory council established in Iowa Code section 147A.2.
 - (2) System evaluation and quality improvement committee established in Iowa Code section 147A.25.
 - (3) Trauma system advisory council established in Iowa Code section 147A.24.
 - (4) State health facilities council established in Iowa Code section 135.61.
- b. Division of administration and professional licensure: professional licensing boards established in Iowa Code chapters 147 and 272C.
- c. Division of behavioral health.
 - (1) Advisory council on brain injuries established in Iowa Code section 135.22A.
 - (2) Domestic abuse death review team established in Iowa Code section 135.109.
 - (3) State substitute medical decision-making board established in Iowa Code section 135.28.
- d. Division of environmental health: technical advisory committee for radiation machines and radioactive materials established in Iowa Code section 136C.3(2).
- e. Division of health promotion and chronic disease prevention.
 - (1) Abuse education review panel established in Iowa Code section 135.11(27).
 - (2) Advisory committee to the center for rural health and primary care established in Iowa Code section 135.107.
 - (3) Committee on maternal and child health established in Iowa Code section 235C.1.
 - (4) Council on chemically exposed infants and children established in Iowa Code section 235C.1.
 - (5) Iowa child death review team established in Iowa Code section 135.43.
- f. Division of tobacco use prevention and control.
 - (1) Commission on tobacco use prevention and control established in Iowa Code section 142A.3(2).
 - (2) Commission on tobacco use prevention and control advisory council established in Iowa Code section 142A.3(9).
 - (3) Just Eliminate Lies executive body established in Iowa Code section 142A.9(2)“c.”
- g. Director's office.
 - (1) Interagency coordinating council established in Iowa Code section 691.6B.
 - (2) State board of health established in Iowa Code chapter 136.
 - (3) State medical examiner advisory council established in Iowa Code section 691.6C.
 - (4) Preventative health and health services block grant advisory committee.
 - (5) Other ad hoc and advisory committees as established by the director pursuant to Iowa Code section 135.11(26).

175.15(3) Publications. News releases, annual reports, project reports, and department newsletters are available from the public information office. Department news releases, project reports, and newsletters may contain information about individuals, including department staff or members of department councils or committees.

175.15(4) Statistical reports. Periodic reports of vital statistics records are available from the bureau of vital statistics.

175.15(5) *Appeal decisions and advisory opinions.* All final orders, decisions and opinions are open to the public except for information that is confidential according to rule 641—175.13(17A,22) or 441—9.20(17A,22). These records may contain information about individuals.

175.15(6) *Published materials.* The department uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

175.15(7) *Policy manuals.* Policy or program manuals for various programs may be obtained by contacting the program.

175.15(8) *All other records that are not exempted from disclosure by law.* Other records used by the department include correspondence files, surveys conducted by programs, information and data files, and records used for processing purposes internally. Some of these records may contain information about individuals. Correspondence files may contain confidential information protected by statutes cited in rule 641—175.13(17A,22).

[Editorial change: IAC Supplement 6/28/23]

641—175.16(17A,22) *Data processing systems.* Except where otherwise noted, data processing systems used by the department do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

641—175.17(17A,22) *Applicability.* This chapter does not:

1. Require the department to index or retrieve records which contain information about individuals by that person's name or other personal identifier.

2. Make available to the general public records which would otherwise not be available under the public records law, Iowa Code chapter 22.

3. Govern the maintenance or disclosure of, notification of, or access to records in the possession of the department which are governed by the regulations of another agency.

4. Apply to grantees, including local governments or subdivisions, that administer state-funded programs, unless otherwise provided by law or agreement.

5. Make available records compiled by the department in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any individual or party subject to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable regulations of the department.

These rules are intended to implement Iowa Code chapters 17A and 22.

[Filed 4/15/88, Notice 1/27/88—published 5/4/88, effective 7/1/88]

[Filed 7/10/08, Notice 5/21/08—published 7/30/08, effective 9/3/08]

[Editorial change: IAC Supplement 6/28/23]

CHAPTER 178
WAIVERS OF HEALTH AND HUMAN SERVICES
ADMINISTRATIVE RULES
Transferred to 441—Chapter 6, IAC Supplement 6/28/23

TREASURER OF STATE[781]

Editorially transferred from [830] to [781], IAC Supp. 1/28/87

CHAPTER 1

ORGANIZATION AND PROCEDURES

- 1.1(17A) Treasurer of state
- 1.2(17A) Duties of treasurer
- 1.3(17A) Location of office

CHAPTER 2

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 2.1(17A,22) Definitions
- 2.3(17A,22) Requests for access to records
- 2.6(17A,22) Procedure by which a subject may have additions, dissents, or objections entered into the record
- 2.9(17A,22) Disclosures without 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 the subject
- 2.13(17A,22) Availability of records
- 2.14(17A,22) Personally identifiable information
- 2.15(17A,22) Other groups of records routinely available for public inspection
- 2.16(17A,22) Data processing systems
- 2.17(17A,22) Applicability

CHAPTER 3

Reserved

CHAPTER 4

LINKED INVESTMENTS FOR TOMORROW (LIFT)

- 4.1(12) Definitions
- 4.2(12) Forms
- 4.3(12) Procedures for submitting and processing a linked investment loan application
- 4.4(12) Qualifications on the certificate of deposit
- 4.5(12) Qualifications on the loan
- 4.6(12) LIFT—small business program

CHAPTER 5

Reserved

CHAPTER 6

COORDINATION OF BONDING ACTIVITIES

- 6.1(12) Scope
- 6.2(12) Definitions
- 6.3(12) Intention to issue obligations
- 6.4(12) Selection of vendors of professional services
- 6.5(12) Exceptions to vendor selection procedure
- 6.6(12) Investment of proceeds
- 6.7(12) Information to be provided to treasurer
- 6.8(12) Costs of vendor selection

CHAPTER 7
REPORTING ON STATE AND LOCAL
GOVERNMENT BONDING ACTIVITIES

7.1(12)	Scope
7.2(12)	Definitions
7.3(12)	Form
7.4(12)	Filing procedures
7.5(12)	Who is required to file
7.6(12)	Publication procedures

CHAPTER 8
ACCEPTING CREDIT CARD PAYMENTS

8.1(12)	Purpose
8.2(12)	Definitions
8.3(12)	State department requirements for accepting credit card payments
8.4(12)	Procedures for administering the credit card receipt process
8.5(12)	Adjustments for convenience fees

CHAPTER 9
UNCLAIMED PROPERTY

9.1(556)	Purpose
9.2	Reserved
9.3(556)	Forms
9.4(556)	Definitions
9.5(556)	Dormancy fees and related charges
9.6(556)	Reporting and delivery of safe deposit box contents
9.7(556)	Reporting of stocks—non-freely transferable securities
9.8(556)	Reporting of individual retirement accounts (IRAs) and other retirement accounts
9.9(556)	Reporting of certificates of deposit and other time deposits
9.10(556)	Indication of interest by an owner in a certificate of deposit or other time deposit
9.11(556)	Reporting of retained asset accounts
9.12(556)	Reporting of tax-advantaged college savings accounts
9.13(556)	Reporting of unused gift certificate balances
9.14 to 9.17	Reserved
9.18(556)	Information required to be included in report
9.19(556)	Early reporting of unclaimed property
9.20(556)	Owner notification and holder due diligence
9.21(556)	Reporting aggregate amounts to the division
9.22(556)	Property held by a third party
9.23(556)	Regulation of finders
9.24(556)	Disposition of safe deposit box contents
9.25(556)	Filing of owner claims
9.26(556)	Documentation of claims by individuals
9.27(556)	Documentation of claims by business entities
9.28(556)	Claims for which the apparent owner of property is an unincorporated nonprofit association that has been dissolved
9.29(556)	Certification of entitlement by claimant
9.30(556)	Claims by holders for owner reimbursements
9.31(556)	Claims to custodial property under the Iowa UTMA or similar Acts
9.32(556)	Claim of another state to property in the custody of the treasurer of state
9.33(556)	Claimant interest in unclaimed property
9.34(556)	Approval of claims

- 9.35(556) Process for payment of claims
- 9.36(556) Surety bonds
- 9.37(556) Examination of holders
- 9.38(556) Estimation
- 9.39(556) Appeal of examination findings
- 9.40(556) Entering into contracts with contract auditors
- 9.41(556) Guidelines
- 9.42(556) Holder voluntary disclosure of unreported property
- 9.43(556) Holder amnesty program

CHAPTER 10

INFORMAL CLAIMS FOR SECOND INJURY FUND

- 10.1(85) Benefits of second injury fund

CHAPTER 11

DEPOSIT OF PUBLIC FUNDS BY STATE AGENCIES

- 11.1(12C) Scope
- 11.2(12C) Definitions
- 11.3(12C) Treasurer's procedures for administering the depository process
- 11.4(12C) State agency requirements for depositing public funds

CHAPTER 12

TECHNICAL INVESTMENT INFORMATION AND ASSISTANCE

- 12.1(12) Definitions
- 12.2(12) Availability of technical investment information

CHAPTER 13

DEPOSIT AND SECURITY OF PUBLIC FUNDS IN BANKS

- 13.1(12C) Scope and transition procedures
- 13.2(12C) Definitions
- 13.3(12C) Forms
- 13.4(12C) Duties and responsibilities of a pledging bank
- 13.5(12C) Requirements for becoming an approved custodian
- 13.6(12C) Duties and responsibilities of an approved custodian
- 13.7(12C) Withdrawals, substitutions, and additions of pledged collateral
- 13.8(12C) Eligible collateral provisions
- 13.9(12C) Suspension or termination of approved custodian designation
- 13.10(12C) Sale or merger of an approved custodian
- 13.11(12C) Suspension or termination
- 13.12(12C) Sale or merger of a pledging bank
- 13.13(12C) Procedures upon default or closing of a bank
- 13.14(12C) Fees of the treasurer

CHAPTER 14

DEPOSIT AND SECURITY OF PUBLIC FUNDS IN CREDIT UNIONS

- 14.1(12C) Scope and transition
- 14.2(12C) Definitions
- 14.3(12C) Forms
- 14.4(12C) Uninsured public deposits in credit unions
- 14.5(12C) Securing uninsured public deposits in credit unions using a letter of credit
- 14.6(12C) Securing public funds in a credit union with a pledge of eligible collateral
- 14.7(12C) Duties of the approved custodian
- 14.8(12C) Termination of credit union's federal insurance

- 14.9(12C) Sale or merger of a credit union
- 14.10(12C) Procedure upon default

CHAPTER 15

REQUIRED PUBLIC FUNDS CUSTODIAL AGREEMENT PROVISIONS

- 15.1(12B) Scope
- 15.2(12B) Required provisions for inclusion in public funds custodial agreements
- 15.3(12B) Optional provisions which public units should consider
- 15.4(12B) Custodial functions
- 15.5(12B) Implementation deadline

CHAPTER 16

IOWA EDUCATIONAL SAVINGS PLAN TRUST

- 16.1(12D) Purpose
- 16.2(12D) Definitions
- 16.3(12D) Participation agreement and program description
- 16.4(12D) Forms
- 16.5(12D) Participant eligibility
- 16.6(12D) Beneficiary eligibility
- 16.7(12D) Program administrator rights and responsibilities
- 16.8(12D) Contributions
- 16.9(12D) Substitution or change of beneficiary
- 16.10(12D) Change of participant or account owner
- 16.11(12D) Qualified withdrawals
- 16.12(12D) Nonqualified withdrawals and cancellation
- 16.13(12D) Rollover
- 16.14(12D) Garnishment
- 16.15(12D) Appeal of decisions

CHAPTER 17

DECLARATORY ORDERS

- 17.1(17A) Petition for declaratory order
- 17.2(17A) Notice of petition
- 17.3(17A) Intervention
- 17.4(17A) Briefs
- 17.5(17A) Inquiries
- 17.6(17A) Service and filing of petitions and other papers
- 17.7(17A) Consideration
- 17.8(17A) Action on petition
- 17.9(17A) Refusal to issue order
- 17.10(17A) Contents of declaratory order—effective date
- 17.11(17A) Copies of orders
- 17.12(17A) Effect of a declaratory order

CHAPTER 18

AGENCY PROCEDURE FOR RULE MAKING

- 18.1(17A) Applicability
- 18.2(17A) Advice on possible rules before notice of proposed rule adoption
- 18.3(17A) Public rule-making docket
- 18.4(17A) Notice of proposed rule making
- 18.5(17A) Public participation
- 18.6(17A) Regulatory analysis
- 18.7(17A,25B) Fiscal impact statement

18.8(17A)	Time and manner of rule adoption
18.9(17A)	Variance between adopted rule and published notice of proposed rule adoption
18.10(17A)	Exemptions from public rule-making procedures
18.11(17A)	Concise statement of reasons
18.12(17A)	Contents, style, and form of rule
18.13(17A)	Agency rule-making record
18.14(17A)	Filing of rules
18.15(17A)	Effectiveness of rules prior to publication
18.16(17A)	General statements of policy
18.17(17A)	Review by agency of rules

CHAPTER 19 WAIVER RULES

19.1(17A)	Definition
19.2(17A)	Scope of chapter
19.3(17A)	Applicability
19.4(17A)	Criteria for waiver
19.5(17A)	Filing of petition
19.6(17A)	Content of petition
19.7(17A)	Additional information
19.8(17A)	Notice
19.9(17A)	Hearing procedures
19.10(17A)	Ruling
19.11(17A)	Public availability
19.12(17A)	Submission of waiver information
19.13(17A)	Cancellation of a waiver
19.14(17A)	Violations
19.15(17A)	Defense
19.16(17A)	Judicial review

CHAPTER 20 IOWA ABLE SAVINGS PLAN TRUST

20.1(12I)	Purpose
20.2(12I)	Definitions
20.3(12I)	Creation of Iowa ABLE savings plan trust
20.4(12I)	Participation agreement and plan disclosure documents
20.5(12I)	Eligible individual
20.6(12I)	Authorized individual
20.7(12I)	Interested party
20.8(12I)	Forms
20.9(12I)	Plan administrator rights and responsibilities
20.10(12I)	Contributions
20.11(12I)	Substitution or change of beneficiary; balance transfer
20.12(12I)	Transfer of account on death
20.13(12I)	Qualified withdrawals
20.14(12I)	Nonqualified withdrawals and participation agreement cancellation
20.15(12I)	Account statements
20.16(12I)	State tax treatment
20.17(12I)	Security
20.18(12I)	Garnishment
20.19(12I)	Reports—annual audited financial report—reports under federal law

20.20(12I)	Federal tax treatment
20.21(12I)	Appeal of decisions

CHAPTER 20
IOWA ABLE SAVINGS PLAN TRUST

781—20.1(12I) Purpose. The purpose of these rules is to provide for the administration and operation of the Iowa ABLE savings plan trust.
[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.2(12I) Definitions. In addition to the terms defined in Iowa Code section 12I.1, the following terms apply to this chapter:

“Account” means an account in the plan opened by the account owner or authorized individual on behalf of the account owner to receive contributions and to provide funds for qualified disability expenses.

“Account balance” means the fair market value of an account.

“Account balance limit” means the amount set as such by the plan as set forth in the plan addendum. When the fair market value of an account reaches the account balance limit, no additional contributions will be accepted by the plan. Assets in an account can continue to accrue earnings beyond the account balance limit.

“Account owner” means the account owner as defined in Iowa Code section 12I.1. An account owner must be an eligible individual. References herein to an account owner include an authorized individual acting on behalf of an account owner.

“Annual contribution limit” means the annual limit on contributions from all sources to an account in a qualified ABLE program under Section 529A.

“Authorized individual” means a person or entity authorized to act on the account owner’s behalf with respect to the account in accordance with these rules and Section 529A. The authorized individual may neither have nor acquire any beneficial interest in the account during the account owner’s lifetime and must administer the account for the benefit of the account owner.

“Beneficiary” or *“designated beneficiary”* means the eligible individual who is the owner of the account.

“Contractor” means any party retained by the plan administrator to assist in the day-to-day operations of the plan, including record-keeping, investment advisory and administrative services. The plan administrator may delegate any responsibilities with respect to day-to-day operations of the plan to one or more contractors.

“Contribution” means an amount contributed to an account in accordance with the Internal Revenue Code, these rules and the plan disclosure documents.

“Eligible individual” means an eligible individual as defined in Section 529A.

“Federal penalty tax” means the additional federal tax imposed on the earnings portion of certain nonqualified withdrawals.

“Fund” means the underlying investments that are mutual funds, exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

“Iable” means the name and logo registered under Iowa law to represent the Iowa ABLE savings plan trust.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended, and regulations promulgated or proposed thereunder.

“Investment options” means the investment choices offered by the plan. Account owners can choose to invest in any number of investment options.

“IRS” means the Internal Revenue Service.

“Member of the family” means a sibling of the eligible individual, whether by blood or by adoption, including a brother, sister, stepbrother, stepsister, half-brother, and half-sister.

“Nonqualified withdrawal” means any withdrawal that does not meet the requirements of being a qualified withdrawal or a rollover. Expenses will not be qualified disability expenses if they are incurred at a time when an account owner is not an eligible individual.

“*NYSE*” means the New York Stock Exchange, Inc.

“*Participation agreement*” means the agreement between the account owner and the plan that governs the account owner’s use of the plan.

“*Plan*” means the Iowa ABLE savings plan trust.

“*Plan addendum*” means the plan-specific disclosure document which contains substantive disclosure of the terms and conditions of an investment in the plan. The plan addendum is intended to be read with the plan disclosure statement.

“*Plan administrator*” means the treasurer of state as trustee and administrator of the plan.

“*Plan disclosure documents*” means the plan disclosure statement and the plan addendum applicable to the plan, including any supplements or amendments thereto.

“*Plan disclosure statement*” means the document adopted by the plan administrator which is intended to provide a description of the program and disclosure of the terms and conditions of an investment in the plan, including any supplements thereto distributed from time to time.

“*Qualified disability expenses*” means qualified disability expenses as defined in Section 529A.

“*Qualified withdrawal*” means any withdrawal from an account used to pay for qualified disability expenses of the account owner.

“*Resident*” means someone living in one location with the intent to remain there permanently or for a definite, indefinite or indeterminable length of time.

“*Rollover*” means a contribution to an account of an account owner (or of an eligible individual who is a member of the family of the account owner) of all or a portion of an amount withdrawn from the account owner’s account, provided the contribution is made within 60 days of the date of the withdrawal and, in the case of a rollover to the account owner’s ABLE account, no rollover has been made to an ABLE account of the account owner within the prior 12 months.

“*Secretary*” means the Secretary of the Treasury of the United States.

“*Section 529A*” means Section 529A of the Internal Revenue Code and regulations promulgated or proposed thereunder.

“*Social Security Act*” means the Social Security Act of 1935, as amended.

“*State*” means the state of Iowa.

“*Treasurer*” means the treasurer of the state of Iowa.

“*Underlying investments*” means the mutual funds, exchange-traded funds, bank products and any other investments in which assets of the plan are invested through the investment options.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.3(12I) Creation of Iowa ABLE savings plan trust. The plan is created as a trust pursuant to Iowa Code chapter 12I. The treasurer is the trustee of the plan and, pursuant to Iowa Code chapter 12I, has all powers necessary to carry out and effectuate the purposes, objectives, and provisions of Iowa Code chapter 12I pertaining to the plan.

The plan provides for the establishment of accounts under the plan by eligible individuals in order to provide a means to save for qualified disability expenses. The eligible individual is the account owner. The treasurer shall segregate moneys received by the plan into two funds: the program fund and the administrative fund. Contributions to the plan made on behalf of an eligible individual may only be made in the form of cash. An account owner is not permitted to provide investment direction regarding contributions or earnings held by the plan.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.4(12I) Participation agreement and plan disclosure documents. The following material shall be used to administer the plan.

20.4(1) The plan shall have a form of participation agreement which must be used to establish an account. The participation agreement shall be signed and dated in accordance with the requirements of the plan disclosure documents by the account owner to verify that the account owner agrees to the terms and conditions of the plan.

20.4(2) The plan will have plan disclosure documents setting forth the terms of the plan and describing the investment options, procedures, fees and costs applicable to the plan. The plan disclosure

documents shall also set forth the privacy policy adopted by the plan administrator for the plan. Persons interested in the plan should consult the plan disclosure documents. The plan disclosure documents may be changed at any time by the plan administrator, and any such change may impact the rights of the account owner under the plan.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.5(12I) Eligible individual. An account owner must be an eligible individual. This rule establishes the following other requirements for opening an account:

20.5(1) An account owner may be a resident of any state.

20.5(2) An account owner must be a U.S. citizen or resident alien.

20.5(3) An account owner must have a valid social security number or tax identification number.

20.5(4) An account owner must have a valid permanent U.S. street address.

20.5(5) No eligible individual may have more than one account in an ABLÉ plan in existence at the same time. A prior ABLÉ account that has been closed does not prohibit the subsequent creation of another ABLÉ account for the same account owner. As part of the enrollment process, the person establishing the account will be required to certify under penalties of perjury that the eligible individual for whom the account is being established has no other ABLÉ account (except in the case of a rollover from an account that will terminate with the completion of the rollover).

20.5(6) If an individual desires to open an account based on benefits eligibility, the individual must make the following certifications under penalties of perjury that:

a. The individual is entitled to benefits based on blindness or disability under Title II or XVI of the Social Security Act and has received a benefit verification letter from the Social Security Administration and agrees to retain and provide the letter (or a genuine copy of the letter or other evidence) to the plan, the plan administrator, the IRS, or the U.S. Department of the Treasury upon request; and

b. The individual's disability meets the qualifications set forth in Section 529A.

20.5(7) If an individual desires to open an account based on certification eligibility, the individual must certify under penalties of perjury that the individual:

a. Has a medically determinable physical or mental impairment which results in marked or severe functional limitations and which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months;

b. Is blind (within the meaning of the Social Security Act); or

c. Has a condition listed in the "List of Compassionate Allowances Conditions" maintained by the Social Security Administration.

The individual must also certify that the disability, blindness, or compassionate allowances condition meets the qualifications set forth in Section 529A, and that the individual has a copy of the individual's diagnosis relating to the relevant impairment(s), signed by a physician meeting the criteria of Social Security Act Section 1861(r)(1). The individual must also agree to retain and provide a copy of the diagnosis and related information to the plan upon request.

20.5(8) By maintaining an account, the account owner is making a continuing certification that the account owner is an eligible individual. It is the account owner's responsibility to notify the plan in writing if the account owner ceases to be an eligible individual. It is also the account owner's responsibility to notify the plan in writing if the account owner subsequently requalifies as an eligible individual.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.6(12I) Authorized individual.

20.6(1) An eligible individual may establish an account. If an eligible individual (whether a minor or adult) is unable to establish the individual's own account, an account may be established on behalf of the eligible individual by the eligible individual's agent under a power of attorney or, if none, by a conservator or legal guardian, spouse, parent, sibling, grandparent of the eligible individual, or a representative payee appointed for the eligible individual by the Social Security Administration, in that order, or as otherwise provided in Section 529A.

20.6(2) The plan may accept a certification, made under penalties of perjury, from the person seeking to establish an account (1) as to the basis for the person's authority to establish the account, and (2) that there is no other person with a higher priority, set forth in Section 529A, to establish the account.

20.6(3) An authorized individual may make investment decisions for the account owner. An authorized individual may neither have nor acquire any beneficial interest in the account during the account owner's lifetime and must administer the account for the benefit of the account owner. Whenever an action is required to be taken by an account owner in connection with an account, the authorized individual may take such action on behalf of the account owner.

20.6(4) An adult account owner with legal capacity may appoint an individual as an authorized individual.

20.6(5) An authorized individual may be required to provide supporting documentation to the plan, including documentation of the authority of the individual to establish the account, in accordance with the plan disclosure documents. The plan may freeze an account until the plan receives the required documentation.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.7(12I) Interested party. An account owner with legal capacity or an authorized individual may designate an interested party to receive information on the account.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.8(12I) Forms.

20.8(1) Appropriate forms must be completed on paper, online or via telephone (whichever is applicable for the requested actions) to perform the actions set forth in and in accordance with the plan disclosure documents. Current forms are available online at IAble.gov. Among the actions which require the completion of an appropriate form are opening and closing an account, transferring ownership rights of an account to another person, changing investments, requesting a full or partial withdrawal, requesting a rollover, and assigning an authorized individual.

20.8(2) The plan administrator may from time to time provide additional forms for use by account owners in connection with actions involving the plan and will make those forms available online and in paper format and may authorize substitute forms for the plan or a process in lieu of forms except when not permitted by Iowa Code chapter 12I.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.9(12I) Plan administrator rights and responsibilities.

20.9(1) The plan administrator reserves the right to:

a. Freeze an account, suspend account services or do both: (1) if the plan administrator receives notice of a dispute regarding account assets or account ownership, including notice of the death of an account owner (until appropriate documentation is received and the plan administrator reasonably believes that it is lawful to transfer account ownership); (2) if the plan administrator reasonably believes a fraudulent transaction may occur or has occurred; (3) in the event of a challenge to the authority of an individual to establish or act on an account; or (4) when a minor account owner reaches the age of majority (until appropriate documentation is received);

b. Close an account, without the account owner's permission, in cases of threatening conduct or suspicious, fraudulent or illegal activity;

c. Terminate or refuse to establish an account if the plan administrator determines that it is in the best interest of the plan or required by law;

d. Close an account if the plan administrator determines that the account owner provided false or misleading information to the plan in establishing or maintaining an account or that the account owner is restricted by law from participating in the plan; and

e. Reject a contribution for any reason, including contributions to the plan that the plan administrator believes are not in the best interests of the plan, an investment option or the account owners.

20.9(2) The risk of market loss, tax implications, penalties, and any other expenses as a result of the above will be solely the account owner's responsibility.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.10(12I) Contributions. The participation agreement and plan disclosure documents will provide for limits on the annual and total contributions to an account. This rule provides for implementation of such provisions.

20.10(1) Section 529A mandates an annual contribution limit for qualified ABLE programs. The account limit is subject to adjustment as provided in Section 529A. The limit may change from time to time, and any change will be set forth in the plan disclosure documents.

20.10(2) Anyone is allowed to make a contribution at any time during the calendar year to an account provided that the total of all annual contributions may not exceed the annual contribution limit and that all contributions are in compliance with the other requirements set forth in the plan disclosure documents.

20.10(3) The plan administrator shall actuarially determine an account balance limit applicable to the account of an account owner. No additional contributions may be made to an account when the fair market value of the account exceeds the account balance limit listed in the plan addendum. Accounts that have reached the account balance limit may continue to accrue earnings, although future contributions may not be made to such accounts. If, however, the market value of an account falls below the account balance limit due to market fluctuations and not as a result of withdrawals from the account, additional contributions will be accepted.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.11(12I) Substitution or change of beneficiary; balance transfer. Iowa Code section 12I.3(3) "a" provides that beneficiaries may be changed subject to the rules and regulations of the treasurer. This rule establishes the criteria for substituting one beneficiary for another. Beneficiary changes shall also be subject to the procedures set forth in the plan disclosure documents.

20.11(1) The beneficiary must be the account owner. At the time of the substitution, the substitute beneficiary must be an eligible beneficiary pursuant to rule 781—20.5(12I) and must be a member of the family of the beneficiary being replaced.

20.11(2) An account owner has the right to change the beneficiary of an account. An account owner may request that a beneficiary be substituted by submitting the appropriate form to the plan administrator.

20.11(3) All or a portion of an account owner's account balance may be transferred to another account within the plan but only during the life of the account owner. At the time of the transfer, the transferee must be an eligible individual and a member of the family of the transferor-account owner.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.12(12I) Transfer of account on death. The account owner has the right to designate a successor account owner in the event of the death of the account owner in accordance with these rules and the plan disclosure documents.

20.12(1) An account owner may designate a successor account owner to succeed to the ownership of the account upon the death of the account owner provided that the successor account owner must be another eligible individual who is a member of the family of the account owner. To designate a successor account owner at death, the account owner shall complete the appropriate form and provide any requested documentation.

20.12(2) Upon the death of the account owner, the successor account owner must notify the plan by submitting a completed participant enrollment form and a certified copy of the death certificate. The change in ownership of the account will become effective for the successor participant once this paperwork has been received and processed. The amount to be transferred is subject to payment of certain expenses as set forth in the Internal Revenue Code.

[ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.13(12I) Qualified withdrawals. This rule establishes the procedures for the payment of qualified withdrawals. A qualified withdrawal is a withdrawal from an account that is used to pay for any qualified disability expenses of the account owner.

20.13(1) The account owner must initiate the withdrawal for qualified disability expenses. The account owner must file the appropriate form with the plan administrator.

20.13(2) Qualified withdrawals will be paid as provided in the plan disclosure documents.

20.13(3) Each qualified withdrawal will be comprised partly of contributions and partly of earnings, based upon the same proportion that contributions and earnings comprise the account owner's account at the time of the withdrawal.

20.13(4) Funds that are distributed to or for the benefit of an account owner shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawals made to or as instructed by the account owner. The account owner receiving the 1099-Q must determine whether the withdrawal was made for a qualified disability expense or was a nonqualified withdrawal.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.14(12I) Nonqualified withdrawals and participation agreement cancellation. An account owner has the exclusive right to cancel a participation agreement and may do so at will. This rule establishes the criteria for nonqualified withdrawals from an account or for the cancellation of a participation agreement.

20.14(1) The earnings portion of a nonqualified withdrawal is subject to federal income taxation and the federal penalty tax except in certain limited circumstances.

20.14(2) An account owner may at any time make a nonqualified withdrawal of a portion of the amount in an account or cancel a participation agreement, without cause, by submitting the appropriate form to the plan administrator. A nonqualified withdrawal will be paid only to the account owner.

20.14(3) Upon cancellation of a participation agreement, an account owner shall be entitled to the return of the account owner's account balance. If the participation agreement is canceled, the account owner is entitled to the amount in the account, subject to any applicable fees and expenses. The balance shall be mailed or otherwise sent to the account owner after receipt of the appropriate form by the plan administrator.

20.14(4) Funds that are distributed to an account owner in a nonqualified withdrawal shall be reported to the IRS on a 1099-Q in the tax year in which the withdrawal is made. The account owner will receive the 1099-Q for any withdrawal. Nonqualified withdrawals may be subject to state and federal taxes and penalties. Withdrawals may be requested online or by calling the plan. In certain instances, additional documentation may be required before a withdrawal may be processed. Only the account owner may direct withdrawals from the account. Withdrawals will be sent as provided in the plan disclosure documents.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.15(12I) Account statements. Account owners will receive quarterly account statements, which will include the total value of the account and a list of transactions within the account for that quarterly period. Account owners will receive account statements, transaction confirmations, and other personal correspondence in paper format unless the account owner signs up for electronic delivery. Fees may vary as provided in the disclosure documents depending on the method of delivery selected.

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.16(12I) State tax treatment. The maximum amount that may be deducted per year for Iowa income tax purposes by an individual who is a resident of this state for contributions to an account shall not exceed the maximum deductible amount determined for the year pursuant to Iowa Code section 12D.3(1). The adjusted annual maximum shall be communicated to account owners in the plans and to the public in any reasonable manner determined by the plan administrator. State inheritance tax treatment of interests in the plan shall be as provided in Iowa Code section 450.4(9).

[ARC 4464C, IAB 5/22/19, effective 6/26/19; ARC 7040C, IAB 6/28/23, effective 8/2/23]

781—20.17(12I) Security. An account owner shall not be entitled to utilize any interest in the plan as security for a loan.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.18(12I) Garnishment. Pursuant to Iowa Code section 642.2, funds held by the plan administrator under the plan are not subject to garnishment.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.19(12I) Reports—annual audited financial report—reports under federal law.

20.19(1) The plan administrator shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the plan by November 1 to the governor and the general assembly. The annual audit shall be made either by the auditor of state or by an independent certified public accountant designated by the auditor of state and shall include direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees.

20.19(2) The annual audit shall be supplemented by any of the following information prepared by the treasurer.

- a. Any related studies or evaluations prepared in the preceding year;
- b. A summary of the benefits provided by the plan, including the number of account owners in the plan; and
- c. Any other information deemed relevant by the plan administrator in order to make a full, fair, and effective disclosure of the operations of the plan.

20.19(3) The plan administrator or contractor shall prepare and submit to the Secretary or other required party any reports, notices, or statements required under Section 529A.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.20(12I) Federal tax treatment. For federal income tax purposes, the plan shall be considered a qualified ABLE program exempt from taxation pursuant to Section 529A and shall be operated so that it meets the requirements of Section 529A.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

781—20.21(12I) Appeal of decisions. An account owner may appeal any decision of the plan administrator under these rules and with respect to the plan.

20.21(1) An account owner may utilize the appeals process after receipt of the decision from the plan administrator.

20.21(2) Failure to submit the appeal request within 30 calendar days of receipt of the decision from the plan administrator shall constitute an acceptance of the decision.

20.21(3) The account owner shall submit to the plan administrator a written request for an appeal along with all supporting documentation.

20.21(4) The plan administrator shall contact the account owner and schedule an appeal meeting within 30 calendar days of receipt of the account owner's appeal request.

20.21(5) An appeal review shall be conducted, at which time the account owner shall present evidence supporting the account owner's basis for the appeal.

20.21(6) Based on the evidence and additional information presented during the appeal, the plan administrator will render a final decision. Such final decision will be written and sent to the account owner within 30 calendar days of the appeal meeting.

[ARC 4464C, IAB 5/22/19, effective 6/26/19]

These rules are intended to implement Iowa Code chapter 12I.

[Filed ARC 4464C (Notice ARC 4123C, IAB 11/21/18), IAB 5/22/19, effective 6/26/19]

[Filed ARC 7040C (Notice ARC 6951C, IAB 3/8/23), IAB 6/28/23, effective 8/2/23]