

AGING, DEPARTMENT ON[17]

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CHAPTER 1
INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 1]

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

17—1.1(231) Authority and purpose. The rules of the Iowa department on aging are based on the authority of Iowa Code chapters 231, 231E, 235B and 249H. These rules prescribe requirements:

1. That agencies shall meet to receive grants under the Older Americans Act and other funds administered through the Iowa department on aging;
2. For planning, administration and service delivery for the department as well as the area agencies on aging;
3. Of the department's fiscal policy;
4. To request waivers from administrative rules;
5. For monitoring, complaint investigation and penalties for programs under the department's jurisdiction; and
6. For operation, administration and planning of the long-term care resident's advocate/ombudsman office and other entities under the department's purview which assist in ensuring quality care and protection of Iowa's older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 5955C, IAB 10/6/21, effective 11/10/21]

17—1.2(231) Other regulations and order of precedence. These agency rules are based on the following federal and state regulations that are listed in the order of precedence which shall prevail in the event of conflicting or inconsistent requirements:

1. Older Americans Act of 1965.
2. Code of Federal Regulations, 5 CFR 900, Subpart F, August 14, 1979; 7 CFR 250, January 9, 1985; 28 CFR 89, March 2, 1976; 45 CFR Parts: 74, June 7, 1981; 80, December 4, 1964; 81, November 7, 1971; 84, May 4, 1977; 90, June 12, 1979; and 1321, April 1, 1985.
3. Federal Administration on Aging policy issuances and administration on aging program instructions.
4. Iowa Code chapter 231 and other Iowa Code chapters as given in 17—1.1(231) and other chapters as determined by the Iowa legislature.
5. Administrative rules published in the Iowa Administrative Code, promulgated under agency number 17.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 1532C, IAB 7/9/14, effective 8/13/14]

17—1.3(231) Applicability. The rules set forth in the chapters under the jurisdiction of the department on aging apply to all grants awarded to any recipient through the department and to any entities regulated by the department. Compliance with these rules shall be mandatory, unless a waiver is granted in accordance with the procedure in 17—Chapter 11.

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

17—1.4(231) Abbreviations. Abbreviations used in rules under agency number 17 are as given below unless defined and used differently in various chapters under the department's jurisdiction:

“AAA” means Area Agency on Aging, singular or plural dependent on context.

“AOA” means the Administration on Aging, the federal agency established to administer the provisions of the Act.

“CFR” means the Code of Federal Regulations.

“CMPFE” means the case management program for the frail elderly as provided in Iowa Code section 231.23A.

“DIA” means the department of inspections and appeals established in Iowa Code chapter 10A.

“IADL” means instrumental activities of daily living.

“IDA” means the Iowa department on aging established in Iowa Code chapter 231.

“*NAPIS*” means the National Aging Program Information System, the data collection and assimilating process used for preparation of the annual uniform state performance report under the OAA.

“*OAA*” means the Older Americans Act.

“*RDA/AI*” means recommended daily allowances/adequate intakes for purposes of nutrition standards.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 1532C, IAB 7/9/14, effective 8/13/14]

17—1.5(231) Definitions. Words and phrases used in rules under agency number 17 are defined as below unless defined and used differently in the various chapters under the department’s jurisdiction. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“*Access*” means the term described in Iowa Code section 231.42 and includes access to long-term care facilities, assisted living programs, elder group homes, residents, tenants, medical records, social records, and administrative records.

“*Accessible*” means without physical, cultural, financial, or psychological barriers to service.

“*Act*” or “*federal act*” or “*OAA*” means the Older Americans Act, 42 U.S.C. § 3001 et seq.

“*Administration costs*” means all direct and indirect costs incurred by a grantee in managing a grant, including but not limited to all audit and board expenses incurred in the support of an area agency on aging director.

“*Administration on Aging*” or “*AOA*” means the federal agency established to administer the provisions of the Act.

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

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

“*Aggrieved party*” means an individual or organization that alleges that the individual’s or organization’s rights have been denied by action of the department, AAA or AAA subcontractor.

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

“*Area agency on aging*,” “*area agency*” or “*AAA*” means the grantee agency(ies) designated by the commission in a planning and service area to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231 and rules promulgated by the department on aging. These terms may be interpreted as either singular or plural form as determined by context.

“*Area plan*” or “*multiyear area plan*” means a document that is developed in accordance with forms or in a format prescribed by the department and that is submitted to the department every two to four years, with annual updates, by an AAA in order to receive federal funding and other support through the department.

“*Civil penalty*” means a civil money penalty not to exceed the amount authorized under Iowa Code section 231.42.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

“*Complaint*” means a report of an alleged violation of requirements of federal and state laws, rules or regulations, or a report of practices and procedures related to admission or to an individual’s entitlement to care and services under federal and state laws and regulations.

“*Comprehensive and coordinated system*” means a system for providing all necessary supportive services, including nutrition services, in a manner designed to:

1. Facilitate accessibility to and utilization of all supportive and nutrition services provided within the geographic area served by the system by any public or private agency or organization.
2. Develop and make the most efficient use of supportive services and nutrition services to meet the needs of older individuals with a minimum of duplication.
3. Use available resources efficiently and with a minimum of duplication; and

4. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the elders on a voluntary basis.

“Continuum of care” means a full range of economic, physical, psychological, social and support programs and services necessary to maintain or restore older individuals to their optimal environment.

“Contract” means an agreement between two or more persons which creates an obligation to do or not to do a permissible or an impermissible action. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation.

“Dementia” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and include memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“Dementia-specific” means a program certified under the law and regulations governing the particular program which either serves five or more persons with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer’s disease, in a dedicated setting.

“Dietitian” or *“licensed dietitian”* means a person who maintains a license granted by the Iowa board of dietetic examiners.

“Direct costs” means those costs that can be identified specifically with a particular final cost objective.

“Disability” (OAA) means (except when such term is used in the phrase “severe disability,” “developmental disabilities,” “physical and mental disability,” “physical and mental disabilities,” or “physical disabilities”) a disability attributable to mental or physical impairment, or a combination of mental or physical impairments, that results in substantial functional limitations in one or more of the following areas of major life activity: (1) self-care, (2) receptive and expressive language, (3) learning, (4) mobility, (5) self-direction, (6) capacity for independent living, (7) economic self-sufficiency, (8) cognitive functioning, and (9) emotional adjustment.

“Elder abuse” (OAA) means abuse, neglect, or exploitation of an older individual (elder) including the willful:

1. Infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or
2. Deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“Eligible individual” means any person who meets the federal definition of this term for the program being utilized.

“Exploitation” (OAA or 235B; dependent on the rule content, the source of the appropriate definition will be referenced in the individual chapter) means:

1. (OAA) The illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain; or
2. “Exploitation” as defined in Iowa Code chapter 235B.

“Fiscal year” or *“FY”* means the state fiscal year, July 1 through June 30, numbered according to the year in which the fiscal year ends.

“Focal point” means a facility established to encourage the maximum collocation and coordination of services for older individuals.

“Frail” (AOA Title III-D) means having a physical or mental disability, including Alzheimer’s disease or a related disorder with neurological or organic brain dysfunction, that restricts the ability of an individual to perform normal daily tasks or that threatens the capacity of an individual to live independently.

“Grantee” means the legal entity to which a grant is awarded and which is accountable to the department for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. The term “grantee” does not include any secondary recipients such as subgrantees or subcontractors that may receive funds from a grantee pursuant to a grant.

“*Greatest economic need*” means the need resulting from an income level at or below the official poverty line.

“*Greatest social need*” means the need caused by noneconomic factors, which include physical and mental disabilities, language barriers, and cultural, geographic or social isolation including isolation caused by racial or ethnic status, that restrict an individual’s ability to perform normal daily tasks or that threaten the older individual’s capacity to live independently.

“*Grievance*” means a report of an administrative action alleged to affect tenants or participants in an adverse manner.

“*Indirect costs*” means those costs that are: (1) incurred for a common or joint purpose benefiting more than one cost objective, and (2) not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved.

“*In-home services*” means:

1. Services of homemakers and home health aides;
2. Visiting and telephone reassurance;
3. Chore maintenance;
4. In-home respite care for families, and adult day care as a respite service for families;
5. Minor modification of homes that is necessary to facilitate the ability of older individuals to remain at home and that is not available under another program (other than another program carried out under the Act);
6. Personal care services; and
7. Other in-home services as defined by the IDA in the state plan submitted in accordance with Section 307 of the Act and by the AAA in the area plan submitted in accordance with Section 306 of the Act.

“*Instrumental activities of daily living*” or “*IADL*” means those activities that reflect the older individual’s ability to perform household and other tasks necessary to meet the older individual’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“*Legal assistance*” means provision of legal advice, counseling and representation by an attorney or other person acting under the supervision of an attorney.

“*Local sources*” means the equivalent cash value of third-party in-kind contributions (e.g., property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee or subgrantee under the grant or subgrant) and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a project or program receiving funds from state appropriations.

“*National Aging Program Information System*” or “*NAPIS*” means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

“*Neglect*” (OAA) means the failure:

1. To provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or
2. Of a caregiver to provide the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

“*Nurse-delegated assistance*” means those delegated tasks or activities for which a professional nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally accountable.

“*Nutrition Services Incentive Program*” or “*NSIP*” means the Nutrition Services Incentive Program established under the Older Americans Act.

“*Older Americans Act*” or “*OAA*” means the same as “Act” defined herein.

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

“*Person*” means the same as that defined in Iowa Code section 4.1(20).

“*Planning and service area*” or “*PSA*” means a geographic area of the state that is designated by the commission for purposes of planning, development, delivery and overall administration of services under a multiyear area plan. “*PSA*” may be interpreted as either singular or plural dependent on context.

“*Plan of correction*” means a plan developed by an area agency on aging and approved by the department which describes the actions the area agency on aging shall take to correct deficiencies arising from the agency’s failure to perform and specifies the date by which those deficiencies shall be corrected.

“*Priority services*” means access services (including case management, transportation, outreach, and information and assistance), in-home services, and legal assistance services.

“*Program income*” or “*contributions*” means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under state-funded or federally funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Except as otherwise provided in the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, or discounts or interest earned on any of them. Furthermore, program income does not include taxes, special assessments, levies, and fines raised by governmental recipients.

“*Provider*” means any person, company, firm, association or other legal entity that provides services as delineated in any chapter under agency number 17.

“*Public or private nonprofit service provider*” means any government agency or private organization certified to be nonprofit by the U.S. Internal Revenue Service or an agency which was established pursuant to Iowa Code chapter 28E or chapter 504A and is composed solely of public agencies or governmental units as defined in those chapters.

“*Routine*” means regular, customary or not occasional or intermittent.

“*Therapeutic diet*” means meals served that are soft, low-fat, low-sodium or controlled calorie.

“*Title III*” means Title III of the federal Act for state and community programs on aging.

1. “*Title III-B*” means requirements and funding for supportive services.
2. “*Title III-C*” means requirements and funding for nutrition services.
3. “*Title III-C(1)*” means requirements and funding for congregate nutrition services.
4. “*Title III-C(2)*” means requirements and funding for home-delivered nutrition services.
5. “*Title III-D*” means requirements and funding for disease prevention and health promotion.
6. “*Title III-E*” means requirements and funding for the National Family Caregiver Support program.

“*Title V*” means Title V of the federal Act for the Senior Community Service Employment Program for Older Americans.

“*Title VII*” means Title VII of the federal Act for allotments for vulnerable elder rights protection activities.

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

² Two ARCs

CHAPTER 2
DEPARTMENT ON AGING
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 2]

17—2.1(231) Mission statement. The mission of the department on aging is to develop a comprehensive, coordinated and cost-effective system of long-term living and community support services that help individuals maintain health and independence in their homes and communities.
[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0621C, IAB 3/6/13, effective 4/10/13]

17—2.2(231) Definitions. Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—2.3(231) Department established.

2.3(1) Authority. The Iowa department on aging is established by Iowa Code chapter 231 and is the sole state agency responsible for administration of the federal Act.

2.3(2) Contact information. General correspondence, inquiries, requests for information or assistance, complaints, or petitions may be sent to or obtained from the following sources:

- a. By mail addressed to: Director, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319;
- b. By telephone at (515)725-3333 or 1-800-532-3213; or
- c. From the website at www.iowaaging.gov.

2.3(3) Business hours. Business hours for the department are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays established by the state executive council.
[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 2048C, IAB 6/24/15, effective 7/29/15]

17—2.4(231) Director. Rescinded ARC 2048C, IAB 6/24/15, effective 7/29/15.

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

2.5(1) Office of the director. The office of the director may be comprised of the director, the assistant director, the state long-term care ombudsman, the policy coordinator, the public information officer, and other personnel. This office is responsible for the overall planning, policy, management and operations of the department.

2.5(2) Division of programs, planning, and administration. The responsibilities of the division of programs, planning, and administration include the development and operation of home- and community-based programs, development of program and operational budgets, providing leadership and direction for the integration of policy development, ensuring that policies are consistent with department goals and results, and accounting and administrative control of appropriation expenditures.

2.5(3) Office of the state long-term care ombudsman. The responsibilities of the state long-term care ombudsman include development, administration, and operation of the program and allocated budget to provide advocacy for individuals residing in long-term care.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0621C, IAB 3/6/13, effective 4/10/13; ARC 2048C, IAB 6/24/15, effective 7/29/15; ARC 3713C, IAB 3/28/18, effective 5/2/18]

17—2.6(231) Staffing. Rescinded ARC 2048C, IAB 6/24/15, effective 7/29/15.

17—2.7(231) Discrimination. Rescinded ARC 2048C, IAB 6/24/15, effective 7/29/15.

17—2.8(231) Affirmative action plans. Rescinded ARC 2048C, IAB 6/24/15, effective 7/29/15.

17—2.9(231) Department complaint and appeal procedures.

2.9(1) Aggrieved party identified. An aggrieved party is any agency, organization, or individual that alleges that the party's rights have been denied or that services provided were not in compliance

with regulations or were substandard because of an action of the department, the commission on aging, an AAA, an AAA subcontractor, or a Senior Community Service Employment Program (SCSEP) subgrantee.

2.9(2) *Complaints or appeals to the department from the AAA or SCSEP subgrantee level.*

a. Except in cases where an AAA is acting in its capacity as a Medicaid provider, complaints at the AAA or SCSEP subgrantee level by any aggrieved party shall be heard first by the AAA or SCSEP subgrantee using the AAA's or SCSEP subgrantee's procedures.

b. Local complaint procedures of an AAA or AAA subcontractor or SCSEP subgrantee shall be exhausted before the department on aging is contacted.

2.9(3) *Requests for an informal review or a contested case hearing.*

a. Informal review. An aggrieved party or a party appealing an AAA-level or SCSEP subgrantee-level decision has 30 calendar days from receipt of written notice of action from the AAA, the SCSEP subgrantee, or the department to request an informal review by the department or a contested case hearing.

(1) Any person who desires to pursue an informal settlement of any complaint may request a meeting with appropriate department staff. The request shall be in writing and shall be delivered to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

(2) The request must contain the subject matter(s) of the complaint and an explanation of all steps taken to resolve the matter prior to requesting an informal review.

(3) Upon receipt of the request for informal review, all formal contested case proceedings, if begun, are stayed.

(4) The department may, as a result of the informal review, negotiate a settlement of the complaint or, if appropriate, may send the matter back to the AAA or SCSEP subgrantee for reconsideration.

(5) Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

(6) When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings, which shall be terminated.

(7) If the parties are unable to reach agreement during the informal review, the matter may, if requested, be handled by the department as a request for a contested case proceeding under Iowa Code chapter 17A and 17—Chapter 13.

(8) A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

b. Contested case proceeding.

(1) Within 15 calendar days of receipt of a request for a contested case hearing, the department shall initiate a contested case proceeding under 17—Chapter 13.

(2) If the controversy is a matter that is subject to a contested case proceeding under Iowa Code chapter 17A, parties may request a contested case proceeding at the conclusion of an unresolved informal review pursuant to 17—Chapter 13.

2.9(4) *Appeal by applicants denied designation as a planning and service area.* Any applicant for designation as a planning and service area whose application is denied and who has been provided a hearing by the department on aging and has received a written appeal decision by the commission may appeal the denial to the assistant secretary of the Administration on Aging in writing within 30 calendar days of receipt of the commission's decision.

2.9(5) *Judicial review.* A party that seeks judicial review shall first exhaust all administrative remedies as follows:

a. A party shall appeal the decision of the administrative law judge as provided in subrule 2.9(4) and receive a decision from the commission as provided in subrule 2.9(4).

b. Petition for judicial review of the commission's decision shall be filed within 30 calendar days after the decision is issued.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4875C, IAB 1/15/20, effective 2/19/20]

17—2.10(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

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

These rules are intended to implement Iowa Code chapter 231.

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

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[Filed ARC 4875C (Notice ARC 4542C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

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

CHAPTER 3
COMMISSION ON AGING

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 2]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 3]

17—3.1(231) Definitions.

“*Commission*” means the commission on aging.

“*Federal Act*” means the Older Americans Act of 1965, 42 U.S.C. 3001 et seq., as amended.

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

17—3.2(231) Purpose of the commission. The purpose of the commission is to develop policy for the department on aging for administration of the federal Act.

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

17—3.3(21,231) Organization of the commission and proceedings.

3.3(1) The commission shall hold at least four meetings annually and by the call of the chairperson.

3.3(2) The commission shall consist of 11 members. Voting members are the 7 members appointed by the governor in accordance with Iowa Code section 231.11. Nonvoting members are the 4 members appointed by the general assembly in accordance with Iowa Code section 231.11.

3.3(3) Four voting members of the commission constitute a quorum.

3.3(4) The meeting agenda shall be given at least ten calendar days before the commission meeting.

3.3(5) The commission shall be governed in accordance with Iowa Code chapter 21, and the commission’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

3.3(6) The chairperson may call an emergency meeting with less than ten days’ notice in accordance with Iowa Code section 21.4.

3.3(7) All meetings shall be open to the public unless an open meeting is properly closed pursuant to Iowa Code section 21.5.

3.3(8) Dates and locations of commission meetings may be obtained from the department’s Web site at www.aging.iowa.gov or directly from the department by calling (515)725-3333.

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

17—3.4(231) Commission duties and authority. In addition to carrying out the duties outlined in Iowa Code Supplement section 231.14, the commission shall:

1. Serve in a judicial capacity relative to procedures developed by the department;
2. Review annually and approve an affirmative action plan for the department; and
3. Require area agencies on aging to follow procedures established by the department to implement commission policy.

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

These rules are intended to implement Iowa Code chapters 21 and 231.

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

¹ Effective date of 20—2.1(2) and 20—2.5(4) “u” delayed 70 days by the Administrative Rules Review Committee.

² Effective date of Ch 3 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 4
DEPARTMENT PLANNING RESPONSIBILITIES

[Prior to 5/20/87, see Aging, Commission on the[20] Chs 3 to 5]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 4]

17—4.1(231) Definitions. Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Days*” means calendar days unless otherwise indicated. If a term refers to a date on which a document or response is due to the department and the due date occurs on a holiday or weekend, then the due date shall be the next business day.

“*Entity*” means any public or private nonprofit agency or organization or a unit of general purpose local government.

“*Indian*” means a person who is a member of an Indian tribal organization or recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

“*Indian tribal organization*” means the recognized governing body of any Indian tribe; or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities.

“*State plan on aging*” means a document developed in accordance with the Older Americans Act that is submitted to the Administration on Aging every two, three or four years, with updates as necessary, in order to receive Older Americans Act grants.

“*Unit of general purpose local government*” means either (1) the government of a county, municipality, township, metropolitan area, or region within the state recognized for areawide planning that functions as a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions and has a population of 100,000 or more, or (2) an Indian tribal organization.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.2(231) State plan on aging.

4.2(1) Authority. The Iowa department on aging is designated as the sole state unit on aging in Iowa for developing and administering a state plan on aging or state plan amendment pursuant to the federal Older Americans Act. The Iowa commission on aging is designated as the policymaking body of the sole state unit on aging in Iowa and is authorized to approve or disapprove a state plan or state plan amendment developed by the department.

4.2(2) State plan on aging. The department shall develop for commission consideration a two-, three-, or four-year state plan on aging in compliance with the Older Americans Act and Iowa Code chapter 231. The department shall develop the state plan on aging in accordance with the procedures and associated instructions, guidance, and direction specified by the Administration on Aging.

4.2(3) State plan amendment. The department may, in its discretion, develop and submit to the commission for consideration an amendment to the state plan on aging at any time.

4.2(4) State plan on aging and state plan amendment review process. Once the department develops the state plan on aging or state plan amendment, the department shall comply with the following chronological review and comment process:

a. The department shall hold at least one public hearing on the proposed state plan or state plan amendment; and

b. The department shall submit the state plan or state plan amendment to the commission for consideration. The commission shall approve or disapprove the state plan or state plan amendment after reviewing the plan and public comments; and

c. The department shall submit a state plan or state plan amendment approved by the commission to the governor for approval and signature; and

d. The department shall submit a state plan or state plan amendment approved by the governor to the Administration on Aging for approval at least 45 days before the effective date of the state plan or state plan amendment.

4.2(5) *State plan on aging or state plan amendment not approved.* If a state plan or state plan amendment is not approved by the commission, the governor, or the Administration on Aging, the department may, in its discretion, table or revise the proposed state plan or state plan amendment. If the department revises the proposed state plan or state plan amendment, the department shall follow the comment and approval process outlined in subrule 4.2(4).

4.2(6) *Technical changes to state plan on aging.* The commission or the governor may, in either party's discretion, make technical corrections to a submitted state plan or state plan amendment prior to approving it.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.3(231) Planning and service areas.

4.3(1) *Designation.* The Older Americans Act requires the department to develop a plan dividing the state into distinct planning and service areas and to submit the plan to the commission for consideration.

4.3(2) *Change in designation.* The department may, in its discretion, submit a plan to the commission to change existing planning and service area designations for any of the following reasons:

- a.* A change or reduction in the number of planning and service areas is mandated by state or federal law;
- b.* A change occurs in the geographical distribution of older individuals in the state;
- c.* A change occurs in the incidence of the need for or in the distribution of resources and services outlined in the Older Americans Act;
- d.* A change occurs in the distribution of older individuals who have greatest economic or social need or who are Indians residing in such areas;
- e.* A change occurs in the location of units of general purpose local government within the state;
- f.* A change occurs in the boundaries of existing areas within the state which were drawn for the planning or administration of supportive service programs; or
- g.* Any other relevant factors as determined by the department.

4.3(3) *Designation requirements for units of general purpose local government.* The department may, in its discretion, recommend to the commission for its consideration designation of any unit of general purpose local government as a planning and service area.

4.3(4) *Process to designate or change planning and service areas.* The department's submission to the commission of a plan to divide the state into distinct planning and service areas or change an existing plan shall be acted upon by the commission only after affected parties have been provided notice and an opportunity to be heard as required by the Older Americans Act.

a. Notice.

(1) The department shall send by certified mail, return receipt requested, a written notice of intent to designate planning and service area boundaries or change existing planning and service area boundaries by mailing said notice to all area agency on aging executive directors and board chairs. The department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government. Notice shall also be provided by posting the notice on the department's website, www.aging.iowa.gov.

(2) The notice shall document the need to designate planning and service area boundaries or change existing planning and service area boundaries and provide a process for submitting written comments to the department for consideration by the commission.

b. Public hearing.

(1) The department shall hold at least one public hearing to obtain comments and provide information on the plan to designate planning and service area boundaries or change existing planning and service area boundaries within 90 days of providing notice pursuant to paragraph 4.3(4) "a."

(2) Information provided by the department at the public hearing shall include, but not be limited to, the proposed planning and service area boundary designations or changes, the reason(s) for the designations or changes, legal authority to designate or change planning and service area boundaries, identification of affected individuals or groups of individuals, and procedures for appealing the proposed planning and service area designations or changes.

(3) Instructions for providing written comments to the department regarding the proposed planning and service area designations or changes shall be provided at the public hearing and shall be posted on the department's website, www.aging.iowa.gov.

4.3(5) *Review of comments.* The department shall review all public comments received and provide a summary for the commission's review.

4.3(6) *Department submission of proposed recommendation to the commission.* The department shall submit to the commission for consideration a proposed recommendation regarding the designation of or change to planning and service areas.

4.3(7) *Commission approval or disapproval of proposed designation of or change to planning and service areas.* The commission may, in its discretion, approve or disapprove the department's proposed recommendation to divide the state into distinct planning and service areas or change existing designations. If the commission disapproves the department's proposed recommendation, the department shall develop an alternate recommendation for commission consideration after notice and an opportunity for public comment as provided in subrule 4.3(4). The commission's final decision shall be posted on the department's website, www.aging.iowa.gov. The commission's final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.3(8) *State appeal of commission decision.* A party aggrieved or adversely affected by the commission's final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.3(9) *Federal appeal of commission's decision.* An adversely affected party may appeal, in writing, the commission's decision regarding a planning and service area designation or change to the Assistant Secretary for Aging of the Administration on Aging, Washington, DC 20201, on the basis of the facts and merits of the matter that is the subject of the action or proceeding or on procedural grounds within 30 days of the commission's final decision. Written requests shall state: (1) the decision for which an appeal is being made, and (2) the legal name(s), address(es), telephone number(s), and email address(es) of the individual or entity requesting the appeal. A copy of this request shall also be mailed to the Director, Department on Aging, 510 E. 12th Street, Suite 2, Des Moines, Iowa 50319. All questions regarding the federal appeal process should be addressed to the Assistant Secretary for Aging at the address provided above.

4.3(10) *Official designation.* Official designation of or change to a planning and service area shall not occur until the final disposition of all appeals.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.4(231) Area agencies on aging.

4.4(1) *Designation.* The department shall designate for each planning and service area an entity to serve as the area agency on aging in accordance with Older Americans Act requirements. The department may, in its discretion, designate one area agency on aging to serve more than one planning and service area.

4.4(2) *Designation requirements for units of general purpose local government.* Whenever the department designates a new area agency on aging after the date of enactment of the Older Americans Act Amendments of 1984 or dedesignates an existing area agency on aging, the department shall give the right of first refusal to a unit of general purpose local government if:

a. The unit of general purpose local government can meet the requirements established to serve as an area agency on aging pursuant to state and federal law; and

b. The unit of general purpose local government's geographical boundaries and the geographical boundaries of the planning and service area are reasonably contiguous.

4.4(3) *Qualifications to serve.* Any entity applying for designation as an area agency on aging must have the capacity to perform all functions of an area agency on aging as outlined in the Older Americans Act and Iowa Code chapter 231.

4.4(4) *Process to designate area agency on aging.*

a. The department shall send by certified mail, return receipt requested, a written notice of intent to designate an area agency on aging by mailing said notice to all area agency on aging executive directors and board chairs. The department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government. Notice shall also be provided by posting the notice on the department's website, www.aging.iowa.gov.

b. The notice shall provide information regarding the department's intent to designate an area agency on aging and to accept requests for applications to serve as an area agency on aging in the affected planning and service area(s). The notice shall be posted and published at least 60 days prior to the request for application submission deadline.

c. The department shall hold at least one public hearing pursuant to the following process:

(1) The department shall hold at least one public hearing to obtain comments and provide information on the plan to designate an area agency on aging within 90 days of providing notice pursuant to paragraph 4.4(4) "a."

(2) Information provided by the department at the public hearing shall include, but not be limited to, the proposed designation, the reasons for designation, legal authority to designate, identification of affected individuals or groups of individuals, and procedures for appeal.

(3) Instructions for providing written comments to the department regarding the proposed designation of an area agency on aging shall be provided at the public hearing and shall be posted on the department's website, www.aging.iowa.gov.

d. Any entity meeting the qualification requirements outlined in the Older Americans Act and Iowa Code chapter 231 may submit an application to serve as an area agency on aging.

e. If an area agency on aging is dedesignated pursuant to rule 17—4.6(231), the department shall use a request for application process to designate a new area agency on aging for the affected planning and service area.

f. The department may, in its discretion, require applicants to submit to an on-site assessment as part of the request for application review process.

4.4(5) *Department submission of proposed recommendation for designation of area agency on aging to the commission.* Following the review of the application(s), the department shall develop and submit to the commission for consideration a proposed recommendation regarding the designation of an area agency on aging for each planning and service area.

4.4(6) *Commission approval or disapproval of proposed designation of area agency on aging.* The commission may, in its discretion, approve or disapprove the department's proposed recommendation to designate an area agency on aging. If the commission disapproves the department's proposed recommendation, the department shall develop an alternate recommendation for commission consideration after notice and an opportunity for public comment as provided in subrule 4.4(4). The final decision shall be made available on the department's website, www.aging.iowa.gov. The commission's final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.4(7) *State appeal of commission decision.* A party aggrieved or adversely affected by the commission's final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.4(8) *Official designation.* An entity shall be designated the area agency on aging upon the commission's acceptance of the department's proposed recommendation for designation, the commission's approval of the area agency on aging area plan, and execution of the associated contract

between the department and the area agency on aging. Official designation of an area agency on aging shall not occur until final disposition of all appeals.

[ARC 9863B, IAB 11/30/11, effective 11/1/11; ARC 4876C, IAB 1/15/20, effective 2/19/20]

17—4.5(231) Continuity of services in the event of appeal of designation. To ensure continuity of services in the affected planning and service area(s) while the commission's final decision regarding designation of an area agency on aging is on appeal, the existing area agency on aging shall provide services unless the department, in its discretion, elects to do any of the following individually or in combination:

1. Temporarily perform the responsibilities of the area agency on aging;
2. Assign the responsibilities of the area agency on aging to any other area agency on aging; or
3. Assign the responsibilities of the area agency on aging to another entity that is in the planning and service area and is competent to provide area agency on aging services.

The department may also submit a written request to the Administration on Aging for an extension of the continuity of services plan pursuant to this rule. The request shall document the need for an extension to provide continuity of services in the affected planning and service area(s) until a successor area agency on aging is designated after appeal.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.6(231) Dedeignation of area agency on aging.

4.6(1) Dedeignation. The department may, in its discretion, initiate action to dedesignate an area agency on aging for any of the following reasons:

- a. Substantial violation of grant terms and conditions or requirements and standards set forth in federal and state law or rules promulgated by the department or other agencies having jurisdiction.
- b. Inadequate performance of the responsibilities outlined in the Older Americans Act, Iowa Code chapter 231 or department rules or any other law or regulation governing administration, operation and reporting for area agencies on aging.
- c. The area agency on aging has been unable or is unwilling to take timely remedial action to correct cited deficiencies within the given time frame established by the department.
- d. A change or reduction in the number of area agencies on aging is mandated by state or federal law.
- e. A change occurs in the designation of the planning and service area served by the area agency on aging.

4.6(2) Process to dedesignate an area agency on aging. The department's submission to the commission of a plan to dedesignate an existing area agency on aging shall be acted upon by the commission only after affected parties have been provided notice and an opportunity to be heard as required by the Older Americans Act.

a. *Notice.*

(1) Notice to existing area agency on aging. The department shall send by certified mail, return receipt requested, a written notice of intent to dedesignate an area agency on aging by mailing said notice to the affected area agency on aging's executive director and board chair. The written notice shall contain the reasons for the proposed dedesignation, the applicable state or federal law(s) or administrative rule(s), and the dedesignation process.

(2) Notice to other affected parties. The department shall provide notice of intent to dedesignate an existing area agency on aging to all other area agencies on aging by mailing notice to their executive directors and board chairs. The department shall also publish a notice in at least one newspaper of statewide circulation and one newspaper circulated in each county located within the affected planning and service area(s) to provide notice to affected parties, including older individuals, individuals with disabilities, service providers, and units of general purpose local government. Notice shall be provided through the department's website, www.aging.iowa.gov. The notice shall document the need to dedesignate an existing area agency on aging and provide a process for submitting written comments to the department for consideration by the commission.

b. *Public hearing.*

(1) The department shall hold at least one public hearing to obtain comments and provide information on the plan to dedesignate an existing area agency on aging within 90 days of providing notice pursuant to paragraph 4.6(2)“a.”

(2) Information provided by the department at the public hearing shall include, but not be limited to, the proposed plan to dedesignate, the reasons for dedesignation, legal authority to dedesignate, identification of affected individuals or groups of individuals, and procedures for appeal.

(3) Instructions for providing written comments to the department regarding the proposed plan to dedesignate an existing area agency on aging shall be provided at the public hearing and shall be posted on the department’s website, www.aging.iowa.gov.

4.6(3) *Review of comments.* The department shall review all public comments received and provide a summary for the commission’s review.

4.6(4) *Department submission of proposed recommendation to the commission.* The department shall submit to the commission for consideration a proposed recommendation regarding the dedesignation of an existing area agency on aging.

4.6(5) *Commission approval or disapproval of proposed recommendation to dedesignate an area agency on aging.* The commission may, in its discretion, approve or disapprove the department’s proposed recommendation to dedesignate an existing area agency on aging. If the commission disapproves the department’s proposed recommendation, the department shall develop an alternate recommendation for commission consideration after notice and an opportunity for public comment as provided in subrule 4.6(2). The commission’s final decision shall be posted on the department’s website, www.aging.iowa.gov. The commission’s final decision is other agency action for the purposes of Iowa Code section 17A.19.

4.6(6) *Department action subsequent to dedesignation.* When an area agency on aging is dedesignated pursuant to this rule, the department shall:

- a. Notify the area agency on aging in writing that it has been dedesignated pursuant to this rule;
- b. Provide a written explanation of the grounds for dedesignation;
- c. Provide written notice of the right to appeal dedesignation and the procedure to be used for appeal;
- d. Notify the Administration on Aging in writing of the dedesignation; and
- e. If necessary, implement a plan for continuity of services in the affected planning and service area(s).

4.6(7) *State appeal of commission decision.* A party aggrieved or adversely affected by the commission’s final decision may seek judicial review in accordance with Iowa Code section 17A.19. Such party shall serve a copy of the petition for judicial review upon the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

4.6(8) *Federal appeal of commission decision.* An adversely affected party may appeal, in writing, the commission’s decision regarding dedesignation of an existing area agency on aging to the Assistant Secretary for Aging of the Administration on Aging, Washington, DC 20201, on the basis of the facts and merits of the matter that is the subject of the action or proceeding or on procedural grounds within 30 days of the commission’s final decision. Written requests shall state: (1) the decision for which an appeal is being made, and (2) the legal name(s), address(es), telephone number(s), and email address(es) of the individual or entity requesting the appeal. A copy of this request shall also be mailed to the Director, Department on Aging, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. All questions regarding the federal appeal process should be addressed to the Assistant Secretary for Aging at the address provided above.

4.6(9) *Official dedesignation.* Official dedesignation shall not occur until the final disposition of all appeals.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.7(231) Continuity of services in the event of dedesignation or appeal of dedesignation. To ensure continuity of services in the affected planning and service area(s) while the commission’s final

decision regarding dedesignation of an area agency on aging is on appeal, the department may, in its discretion, elect to do any of the following individually or in combination:

1. Temporarily perform the responsibilities of the area agency on aging;
2. Assign the responsibilities of the area agency on aging to the existing area agency on aging;
3. Assign the responsibilities of the area agency on aging to any other area agency on aging; or
4. Assign the responsibilities of the area agency on aging to another entity that is in the planning and service area and is competent to provide area agency on aging services.

The department may also submit a written request to the Administration on Aging for an extension of the continuity of services plan pursuant to this rule. The request shall document the need for an extension to provide continuity of services in the affected planning and service area(s) until a successor area agency on aging is designated after appeal.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

17—4.8(231) Severability clause. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 9863B, IAB 11/30/11, effective 11/1/11]

These rules are intended to implement Iowa Code chapter 231 and 2011 Iowa Acts, House File 45.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

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[Filed Emergency ARC 9863B, IAB 11/30/11, effective 11/1/11]

[Filed ARC 4876C (Notice ARC 4543C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

¹ Effective date of Ch 4 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 5
DEPARTMENT FISCAL OPERATIONS
[Prior to 5/20/87, see Aging, Commission on the [20], rule 4.9 and Ch 9]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 5]

17—5.1(231) Funds to area agencies on aging.

5.1(1) The department shall distribute funds to each area agency on aging pursuant to federal and state laws, rules, and regulations.

5.1(2) The area agencies on aging shall use funds distributed by the department for the designated purpose and pursuant to federal and state laws, rules, and regulations.
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.2(231) Distribution of Older Americans Act funds to area agencies on aging. On and after July 1, 2013, the following shall apply:

5.2(1) The department shall review the formula for distribution within the state of funds received under the Older Americans Act and required to be distributed by funding formula every four years, at a minimum. The department, in its discretion, shall determine whether to maintain the existing formula or develop a new formula based on the criteria outlined in the Older Americans Act and on other relevant factors.

5.2(2) The department shall comply with all federal and state laws, rules, and regulations in developing a formula for distribution within the state of funds received under the Older Americans Act.

5.2(3) The department shall adhere to the following process to develop and adopt a formula for distribution within the state of funds received under the Older Americans Act:

a. The department shall hold a minimum of one meeting with area agencies on aging to facilitate discussion and receive comment regarding the proposed formula for distribution.

b. The department shall publish the proposed formula for distribution for review and comment by posting the information on the department's Web site. The publication shall comply with all criteria outlined in the Older Americans Act. The publication shall be posted on the department's Web site for a minimum of 30 calendar days prior to the date set for commission consideration of the proposed formula for distribution. The publication shall provide the method and time frame for acceptance of public comment.

c. The department shall distribute a press release containing the proposed funding formula to all newspapers within the state.

d. The information published pursuant to paragraph 5.2(3) "b" shall be mailed, via standard postal delivery or electronic mail, to the executive director and board chairperson of each area agency on aging a minimum of 30 calendar days prior to the date set for commission action to approve the formula for distribution.

e. The department shall accept written public comment in response to publication of the proposed formula for a minimum of 14 calendar days following publication. The method and time frame for acceptance of public comment shall be provided in the information published pursuant to paragraphs 5.2(3) "b" and "c."

f. The department shall submit the proposed formula for distribution to the Assistant Secretary of the U.S. Department of Health and Human Services for approval pursuant to the Older Americans Act.

g. The department shall review all public comments received and provide a summary for the commission's review.

h. The department shall submit to the commission for consideration a proposed formula to distribute funds within the state.

i. The commission may, in its discretion, approve or disapprove the department's proposed formula for distribution of funds within the state. If the commission disapproves the department's proposed formula, the department shall develop an alternate formula for distribution of funds within the state after following all procedures provided in rule 17—5.2(231).

j. The commission's final decision shall be posted on the department's Web site, www.aging.iowa.gov.

k. The department shall distribute federal funds proportionately based on a state fiscal year.

5.2(4) NSIP. Each area agency on aging shall receive a portion of the NSIP allotment to the department based on the proportion of an area agency on aging's eligible meals related to the total of NSIP-eligible meals for all area agencies on aging.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.3(231) Distribution of state funds. On and after July 1, 2013, the following shall apply:

5.3(1) The department shall review the formula for distribution within the state of funds received from state appropriations every four years, at a minimum. The department, in its discretion, shall determine whether to maintain the existing formula or develop a new formula based on the criteria outlined in the Older Americans Act and other relevant factors.

5.3(2) The department shall comply with all federal and state laws, rules, and regulations in developing a formula for distribution within the state of funds received from state appropriations.

5.3(3) The department shall adhere to the following process to develop and adopt a formula for distribution within the state of funds received from state appropriations:

a. The department shall hold a minimum of one meeting with area agencies on aging to facilitate discussion and receive comment regarding the proposed formula for distribution.

b. The department shall publish the proposed formula for distribution for review and comment by posting the information on the department's Web site. The publication shall comply with all criteria outlined in the Older Americans Act and state law. The publication shall be posted on the department's Web site for a minimum of 30 calendar days prior to the date set for commission action to approve the proposed formula for distribution. The publication shall provide the method and time frame for acceptance of public comment.

c. The department shall distribute a press release containing the proposed funding formula to all newspapers within the state.

d. The information published pursuant to paragraph 5.3(3) "b" shall be mailed, via standard postal delivery or electronic mail, to the executive director and board chairperson of each area agency on aging a minimum of 30 calendar days prior to the date set for commission action to approve the formula for distribution.

e. The department shall accept written public comment in response to publication of the proposed formula for a minimum of 14 calendar days following publication. The method and time frame for acceptance of public comment shall be provided in the information published pursuant to paragraphs 5.3(3) "b" and "c."

f. The department shall review all public comments received and provide a summary for the commission's review.

g. The department shall submit to the commission for consideration a proposed formula to distribute funds within the state.

h. The commission may, in its discretion, approve or disapprove the department's proposed formula for distribution of funds within the state. If the commission disapproves the department's proposed formula, the department shall develop an alternate formula for distribution of funds within the state after following all procedures provided in rule 17—5.3(231).

i. The commission's final decision shall be posted on the department's Web site, www.aging.iowa.gov.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.4(231) Posting of formulas for distribution. The department shall maintain a posting of the current formulas used for distribution of state or federal funds on the department's Web site, www.aging.iowa.gov.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.5(231) Priority service expenditures. Each area agency on aging shall expend a specified minimum percentage of Older Americans Act Title III-B funds, less administration costs, for priority

services. The minimum percentage to be expended on priority services shall be established by the commission and posted on the department's Web site, www.aging.iowa.gov.
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.6(231) Match requirements for Older Americans Act funds.

5.6(1) Area agencies on aging shall comply with all match requirements established by and outlined in the Older Americans Act and federal rules and regulations.

5.6(2) Older Americans Act match requirements shall be met with the use of nonfederal sources, as defined by the Older Americans Act. The match used to meet Older Americans Act requirements shall be separate and independent of the match used to meet the state match requirements.

5.6(3) If an area agency on aging fails to appropriately match Older Americans Act funds pursuant to the match requirements of the Older Americans Act, the department may take any action necessary to correct the deficiency, including but not limited to the remedies provided in rule 17—5.14(231).
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.7(231) Match requirements for state funds.

5.7(1) Area agencies on aging shall comply with all match requirements mandated by federal and state laws, rules, and regulations.

5.7(2) The match requirement for state funds of \$15 for every \$85 of state funds distributed shall be met with the use of local sources. The local sources used to meet state match requirements shall be separate and independent of the match used to meet the Older Americans Act match requirements.

5.7(3) If an area agency on aging fails to appropriately match state funds pursuant to the match requirements established in state law and rule, the department may take any action necessary to correct the deficiency, including but not limited to the remedies provided in rule 17—5.14(231).
[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.8(231) Contributions. Each area agency on aging shall be allowed to receive voluntary contributions in compliance with federal and state laws, rules, and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.9(231) General reporting requirements.

5.9(1) Each area agency on aging shall submit program and financial reports to comply with federal and state program requirements.

5.9(2) Each area agency on aging shall be responsible for the following:

- a. Gathering accurate information necessary to complete reports;
- b. Completing reports on forms or in a format prescribed by the department; and
- c. Submitting reports or data to the department on or before due dates established by the department.

5.9(3) Each area agency on aging shall be solely responsible for obtaining and reporting necessary information from subgrantees, contractors and subcontractors.

5.9(4) Failure to submit complete and accurate program or financial reports by the established due dates, even if waiver is granted, may subject the area agency on aging to remedies provided in rule 17—5.14(231).

[ARC 0743C, IAB 5/15/13, effective 6/19/13; ARC 1533C, IAB 7/9/14, effective 8/13/14]

17—5.10(231) Redistribution.

5.10(1) *Redistribution of federal funds.*

a. Funds distributed pursuant to the Older Americans Act which are not expended for goods or services or both to be provided by the last day of the award period shall be available to the department for redistribution unless a written application for carryover is approved pursuant to paragraph 5.10(1) "b."

b. Funds distributed pursuant to the Older Americans Act may be carried over upon department approval of a written application. The written application must be received by the department on or before the final report due date for that fiscal year. The written application must contain the amount

of funds requested for carryover. The department, in its discretion, shall approve or deny the written application.

c. Any unexpended funds distributed for administration costs pursuant to the Older Americans Act, as shown in the department's annual allotment tables, may be used only for program service expenditures in the subsequent fiscal year.

5.10(2) Redistribution of state funds.

a. If the department determines prior to the end of a fiscal year that an area agency on aging will not expend its state funds for goods or services or both to be provided by the last day of the fiscal year, the department may redistribute the funds to one or more area agencies on aging in accordance with demonstrated utilization or by a redistribution method specified by the department.

b. The department may, in its discretion, redistribute funds to one or more area agencies on aging based on expenditure estimates for that fiscal year. The department may redistribute funds as early as January of that fiscal year.

c. The area agencies on aging receiving the redistributed funds shall expend them by the end of the fiscal year in which they are redistributed for goods or services or both to be provided by the last day of the fiscal year.

5.10(3) Failure to expend federal or state funds. Failure to expend federal or state funds in accordance with the area plan may subject the area agency on aging to remedies provided in rule 17—5.14(231).

[ARC 0743C, IAB 5/15/13, effective 6/19/13; ARC 1533C, IAB 7/9/14, effective 8/13/14]

17—5.11(231) State reviews and audits.

5.11(1) Each area agency on aging shall complete an annual audit report and submit the audit report to the department for review as directed in the guidelines issued by the department.

5.11(2) The audit costs shall be negotiated and paid for by the grantee from the applicable grants.

5.11(3) The department shall provide the grantee with guidelines to be followed by the auditor.

5.11(4) Failure to fully comply with state review and audit requirements by the due dates, even if waiver is granted, may subject the area agency on aging to remedies provided in rule 17—5.14(231).

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.12(231) Acquisition of goods and services. All area agency on aging acquisitions of goods and services shall be in compliance with state and federal laws, rules and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.13(231) Records—contract administration. The department and each area agency on aging shall maintain records and reports for purchases and contracts that utilize state or federal funds. The records and reports shall be maintained pursuant to federal and state laws, rules, and regulations.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

17—5.14(231) Correction of deficiencies.

5.14(1) Remedies. The purpose of remedies is to ensure prompt action is taken by an area agency on aging to correct deficiencies arising from failure to perform as identified by this rule. The department shall determine the remedies to be applied to the area agency on aging for failure to perform.

5.14(2) Number of remedies. The department may apply one or more remedies for each deficiency constituting failure to perform or for all deficiencies constituting failure to perform.

5.14(3) Notification requirements. The department shall give the area agency on aging written notice of remedy at least 15 calendar days before the effective date of the remedy. The written notice of remedy shall include the following:

- a.* The nature of the failure to perform.
- b.* The remedy imposed.
- c.* The effective date of the remedy.
- d.* The right to appeal the determination leading to the remedy.

5.14(4) Factors to be considered in selecting remedies.

a. In order to select the appropriate remedy, the department shall determine the seriousness of the failure to perform. To determine the seriousness of the failure to perform, the department shall consider whether the area agency on aging's failure(s) to perform:

- (1) Is isolated.
- (2) Constitutes a pattern.
- (3) Is broad in scope.
- (4) Creates a financial burden for the department, other area agencies on aging, or the aging network.
- (5) Creates an administrative burden for the department, other area agencies on aging, or the aging network.

b. In selecting an appropriate remedy, the department may also consider the area agency on aging's prior history of failure to perform in general and specifically with reference to the cited failure to perform.

5.14(5) Available remedies. The department may select one or more of the following remedies with reference to a cited failure to perform:

a. *Directed in-service training.* The department may require the staff of an area agency on aging to attend an in-service training program if education is likely to correct the failure to perform. The area agency on aging is responsible for the payment for the directed in-service training.

b. *Department monitoring.* The department may require an area agency on aging to receive increased monitoring by the department. The frequency and duration of the monitoring is within the discretion of the department.

c. *Directed plan of correction.* The department may develop a plan of correction and require an area agency on aging to take action within specified time frames.

d. *Reduction of funding.* The department may reduce the amount of funding distributed.

e. *Investigative audit.* The department may require an area agency on aging receive an investigative audit. The area agency on aging is responsible for the payment for this investigative audit.

f. *Other remedies.* The department may also impose other remedies, as appropriate.

g. *Dedesignation.* The department may request dedesignation of an area agency on aging pursuant to rule 17—4.6(231).

5.14(6) Duration of remedies. Remedies shall continue until:

a. The area agency on aging has achieved substantial compliance as determined by the department or based upon a revisit or after an examination of credible written evidence that the department can verify without an on-site visit; or

b. The area agency on aging is dedesignated.

5.14(7) Mandatory plan of correction. Each area agency on aging that has been cited for a failure to perform shall submit a plan of correction for approval by the department regardless of which remedies are applied.

5.14(8) Procedures for plan of correction. Within 30 calendar days following receipt of the written notice of remedy pursuant to subrule 5.14(3), the area agency on aging shall submit a plan of correction to the department.

a. *Contents of plan.* The plan of correction shall contain the following information:

- (1) How the area agency on aging will correct the failure to perform;
- (2) How the area agency on aging will act to protect consumers within the affected area;
- (3) The measures the area agency on aging will take or the systems it will alter to ensure that the problem does not reoccur;
- (4) How the area agency on aging plans to monitor its performance to make sure that solutions are sustained; and

(5) The date(s) when corrective action will be completed.

b. *Review of plan.* The department shall review the plan of correction within 30 calendar days of receipt. The department may request additional information or revisions to the plan, which shall be provided by the area agency on aging as requested.

5.14(9) Appeal of a determination of failure to perform.

a. An area agency on aging may request a hearing on a determination of a failure to perform that leads to a remedy citation. The affected area agency on aging shall file the request for hearing in writing to the department within 60 calendar days from receipt of the written notice of remedy.

b. Hearings shall be conducted pursuant to 17—Chapter 13, with an administrative law judge appointed as the presiding officer and with the department as the final decision maker with subject matter jurisdiction.

c. An area agency on aging may not appeal the choice of remedy, including the factors considered by the department in choosing the remedy.

[ARC 0743C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code chapter 231.

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¹ Effective date of 20—9.22(2) delayed 70 days by the Administrative Rules Review Committee.

² Effective date of Ch 5 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 6
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 5]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 6]

17—6.1(231) Definitions. Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Access*” or “*access services*” means case management, transportation, outreach, information and assistance.

“*Entrepreneurial activities*” means the manufacturing, processing, selling, offering for sale, renting, leasing, delivering, dispensing, distributing or advertising of goods or services for profit; or a contract or agreement that an AAA will provide specific named service(s) for third-party payees.

“*Priority services*” means access, in-home and legal assistance services.

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

17—6.2(231) Area plan.

6.2(1) *Area plan.* Each AAA shall develop and administer an area plan.

6.2(2) *Duration and format of the area plan.*

a. The area plan shall be for a minimum of a two-year and a maximum of a four-year period specified by the department, with annual updates.

b. Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

6.2(3) *Comprehensive and coordinated delivery system.* The multiyear area plan shall provide for the development of a comprehensive and coordinated service delivery system for all supportive and nutrition services needed by older individuals in the planning and service area to:

a. Facilitate access to and utilization of all existing services; and

b. Develop supportive and nutrition services effectively and efficiently to meet the needs of older individuals.

6.2(4) *Requirements.* An area plan shall provide for a comprehensive and coordinated service delivery system as defined in:

a. The federal Act;

b. Older Americans Act Title III Regulations; Code of Federal Regulations, Title 45, Volume 4, Part 1200 (45 CFR 117);

c. This chapter.

6.2(5) *Plan content.* The area plan shall, at a minimum, contain the following information:

a. Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and

b. Objectives and budget for each year of the designated period and methods to obtain those objectives; and

c. Client projections. Area agencies shall project, on forms or in a format prescribed by the department, the number of older individuals who will be served within each PSA.

6.2(6) *Area plan amendments and revisions.*

a. *Amendments.* The AAA shall amend the area plan and submit it to the commission for approval when:

(1) A new or amended state or federal statute, rule or regulation requires new information or conflicts with any existing plan provisions;

(2) A United States Supreme Court decision changes the interpretation of a statute or rule;

(3) Local law, organization, policy or agency operations change and are no longer accurately reflected in the area plan;

(4) The department requires amendments;

(5) The grantee proposes to change the designation of the single organizational unit or component unit responsible for programs under the federal Act or state law; or

(6) The area agency proposes to add or delete a service category.

b. Revision. The AAA may be required to revise the plan and submit it to the department for approval if:

(1) A department funding source to the area agency changes; or

(2) A program requirement changes.

6.2(7) Procedures for area plans, plan amendments and revisions.

a. Public hearing(s). The AAA shall hold at least one public hearing on the area plan and all plan amendments as required in this chapter. Priority services and direct service requests shall appear as distinct agenda items for any hearing.

(1) The public hearing(s) shall be held prior to submission of the area plan or amendment(s) at a time which permits older individuals, public officials, and other interested parties reasonable opportunity to participate. The hearing(s) shall be held at a barrier-free, fully accessible location.

(2) The AAA shall provide notice, in accordance with Iowa Code section 21.4(1), of the hearing by sending notice to all known groups of older individuals, PSA public officials, and other interested parties. The notice shall be issued 14 business days prior to the public hearing and include the time, date, and location of the public hearing. The AAA shall comply with any applicable state or federal laws and regulations governing public hearing processes and procedures.

(3) The AAA shall prepare and submit to the department a written record of the public hearing in accordance with instructions issued by the department.

b. Review and comment by the advisory council.

(1) The AAA shall submit the area plan, amendments and revisions for review and comment to the AAA advisory council.

(2) The official representative of the AAA shall sign the plan, amendment or revision to signify that the AAA has completed all of the requirements of this chapter. The AAA shall then submit the area plan, amendment or revision to the department for review.

6.2(8) Commission review. Plans and plan amendments may be approved by the commission after they have been processed in accordance with the process given in this chapter. Revisions may be approved by the department after they have been processed in accordance with the process given in this chapter.

6.2(9) Appeals. Any person may appeal a denial of approval of an area plan, plan amendment or revision as provided in 17—Chapter 4.

6.2(10) Area profile. Each AAA shall submit to the department a profile in accordance with the time frame and procedures as issued by the department. The profile shall contain, but not be limited to, the following AAA information:

a. Affirmative action plan;

b. Table of organizational structure;

c. Inventory of nutrition sites and senior centers;

d. Listing of the area agency's designated community focal points; and

e. Listing of the officers of the AAA board of directors.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13; ARC 1534C, IAB 7/9/14, effective 8/13/14; ARC 2522C, IAB 5/11/16, effective 6/15/16]

17—6.3(231) Area agency administration.

6.3(1) Director. The AAA shall employ a qualified director and may employ other staff as necessary to manage and monitor the area plan.

6.3(2) Director's responsibility. It is the responsibility of the AAA director to:

a. Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;

b. Develop the area plan;

c. Implement organizational operations;

d. Budget for services and operations;

e. Coordinate implementation of services; and

f. Monitor and evaluate services.

6.3(3) *Discrimination.* The AAA shall offer equal opportunities for employment or promotion to all employees and to applicants who meet the qualifications of the open position. Discrimination against any person because of gender, race, national origin, age, political affiliation, creed, color, religion, physical or mental disability, or other nonmerit factors is prohibited during any aspect of personnel administration and during employment.

6.3(4) *Affirmative action plans.* Each AAA shall develop an affirmative action plan which shall be available for review by the department.

6.3(5) *Training and development requirements.* Each AAA shall have a plan and procedures that will support a broad program of staff development activities to ensure training of volunteers, paid personnel and providers of services to Iowa's older individual population.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13; ARC 1534C, IAB 7/9/14, effective 8/13/14]

17—6.4(231) Confidentiality and disclosure of AAA information.

6.4(1) *Confidentiality.* AAA shall implement procedures to ensure that no information in possession of an AAA, or an entity providing services under programs funded by the department, is disclosed in a form identifiable with an individual without that individual's informed consent regardless of the source of the information.

6.4(2) *Public accessibility to manuals, guidelines, and standards.* Copies of all manuals, guidelines, and standards referred to by these rules shall be maintained by the AAA and available for public inspection.

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

17—6.5(231) AAA contact information. Information on how to contact the appropriate AAA office may be obtained by sending a request to the Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; or by telephone at (515)725-3333; or by visiting the department's website, www.iowaaging.gov.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 2522C, IAB 5/11/16, effective 6/15/16]

17—6.6(231) Duties of AAA.

6.6(1) General. Each AAA shall fulfill the AAA duties specified in the federal Act, Iowa Code section 231.33 and this chapter. AAA shall:

a. Carry out functions related to advocacy, planning, coordination, interagency linkages, information sharing, brokering, monitoring and evaluation designed to lead to and maintain a comprehensive and coordinated community-based system. This system shall serve the PSA so that older individuals may lead independent, meaningful and dignified lives in their own homes and communities for as long as possible;

b. Strive to offer a range of services which are readily accessible to all older individuals by utilizing public, private and voluntary entities and personal resources of the client;

c. Encourage collaborative decision making among public, private, voluntary, religious and fraternal organizations, as well as older individuals;

d. Assist in determining and providing special assistance or resources to the most vulnerable older individuals who are in danger of losing their independence; and

e. Perform all functions as delineated in the area plan.

6.6(2) Additional duties include:

a. Attempt to involve the private bar and legal services corporation in the PSA in legal assistance activities;

b. Submit all reports in accordance with the department-prescribed form or format and due dates;

c. Coordinate AAA activities with mental health services provided by community health centers and other nonprofit private or public organizations;

d. Compile and summarize information on institutions of higher education in the PSA which offer courses of study to older individuals at a no- or reduced-tuition rate and disseminate the information to older individuals at their gathering places;

e. Seek out older individuals who may be eligible to receive Supplemental Security Income benefits under Title XVI of the Social Security Act, medical assistance under Titles XVIII and XIX of the Social Security Act, and benefits under the Food Stamp Act of 1977. The AAA shall provide information on the requirements for eligibility to receive these benefits and assist in applying for appropriate assistance and benefits;

f. Coordinate planning by individuals, agencies and organizations interested in the prevention of abuse, neglect and exploitation of older individuals and assist in implementation of educational and awareness activities, in coordination with the office of the state long-term care ombudsman program;

g. Coordinate planning with other agencies and organizations to provide health promotion activities for older individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 1534C, IAB 7/9/14, effective 8/13/14; ARC 2522C, IAB 5/11/16, effective 6/15/16]

17—6.7(231) AAA board of directors.

6.7(1) Each designated AAA shall establish a board of directors in accordance with its individual articles of incorporation and bylaws.

6.7(2) The AAA board membership shall be representative of the geographic planning and service area.

6.7(3) Each AAA board of directors shall have board nominating and election procedures specified in its bylaws.

6.7(4) Each AAA shall specify in its bylaws the scope, function and responsibilities of the board, board committees and individual board members.

6.7(5) Each AAA shall provide an orientation process for newly elected board members that includes, at a minimum, the scope, function and responsibilities of the AAA and the responsibilities of the board, board committees and individual board members.

6.7(6) The department shall provide a minimum of four hours of training annually to AAA board members.

6.7(7) The AAA board of directors shall comply with Iowa Code chapter 504, “Revised Iowa Nonprofit Corporation Act.”

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

17—6.8(231) AAA advisory council.

6.8(1) *Member requirements.* The AAA shall establish an advisory council composed of members, at least one-half of whom are aged 60 and older, which shall include:

a. Recipients of services under the Act, including minority older individuals and older individuals residing in rural areas;

b. Representatives of older individuals;

c. Current local elected officials;

d. The general public;

e. Representatives of health care provider organizations, including providers of veterans’ health care, if appropriate;

f. Representatives of supportive and nutrition service providers; and

g. Persons with leadership experience in private and volunteer sectors.

6.8(2) *Duties.* It shall be the specific responsibility of the advisory council to advise the AAA and:

a. Advocate for older individuals in the PSA by keeping informed of all activities and proposals concerning the older individuals;

b. Review and make recommendations on the content, formulation, administration and priorities of the area plan and participate in public hearings on the area plan;

c. Serve as an information link between the AAA and providers of services to older individuals in the PSA;

d. Review and comment on community policies, programs and actions which affect older individuals;

e. Assist in generating local support for development of programs for older individuals in the area.

6.8(3) *Frequency of meetings.* The AAA advisory council shall meet at least quarterly.

6.8(4) Staff support. The AAA shall provide staff and assistance to the AAA advisory council.

6.8(5) Bylaws. The AAA advisory council bylaws shall contain at least the basic bylaws: name, purpose, members, officers, meetings, committees, parliamentary authority and procedure for amendment of bylaws. The bylaw on membership shall include, but is not limited to, the number of, selection process and length of terms for members.

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

17—6.9(231) Emergency situations.

6.9(1) Prior to and after a natural disaster or other safety-threatening situation, each AAA shall plan and coordinate with other public and private entities for safe and timely continuity of service and the restoration of normal living conditions for older individuals. This shall include:

- a. Alerting older individuals of the impending danger;
- b. Assessing the needs of older individuals after the event occurs; and
- c. Ensuring that identified needs are met through collaboration with other agencies.

6.9(2) To further this purpose, each AAA shall:

- a. Include in the procedures manual established as required in this chapter procedures to respond to emergency or disaster situations;
- b. Include in the development and training plan methods of training for staff, contractors, and other interested parties in response to emergency or disaster situations; and
- c. Include in contracts provisions for responding to emergency or disaster situations including, but not limited to, shifting funds from one activity to another or from one contractor to another.

6.9(3) Services. As a part of emergency response, the AAA may plan, coordinate and provide services funded under other programs consistent with responsibilities of an AAA.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4877C, IAB 1/15/20, effective 2/19/20]

17—6.10(231) AAA procedures manual. A procedures manual shall be developed and kept current by the AAA. The manual shall, at a minimum, establish procedures to be followed in:

6.10(1) Establishing and maintaining information and assistance availability to ensure that older individuals within the PSA will have convenient access to services;

6.10(2) Conducting periodic evaluations, which may include participant satisfaction surveys of activities carried out under the area plan;

6.10(3) Furnishing appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers;

6.10(4) Establishment of a request for proposal process that includes methods of selection of providers and methods for award of grants or contracts under the area plan, including stipulations that all subcontractors comply with all applicable local, state and federal laws, rules or regulations, and, if applicable, all requirements for nonprofit entities;

6.10(5) Resolving complaints by any aggrieved party directly affected by an action or omission of the AAA. AAA appeal procedures shall be in compliance with the relevant federal and state statutes, regulations and rules and shall contain at least the following procedures and time frames for complaint resolution:

- a. Acknowledgment of the complaint;
- b. Process for attempting to informally resolve the complaint;
- c. Time frame for sending a hearing notice;
- d. Process for holding a hearing;
- e. Notification of the outcome of the hearing;
- f. Appeal to the next higher authority;

6.10(6) Ensuring confidentiality, so that no information about or obtained from an older individual is disclosed in a form that identifies the person without the person's informed consent;

6.10(7) The assessment and monitoring methods for programs and subcontracts funded by the AAA. This shall include documentation of quarterly monitoring of performance and on-site assessment and report at least annually;

6.10(8) Response to emergency or disaster situations;

- 6.10(9)** Development of methods by which priority for delivery of services is determined;
- 6.10(10)** Obtaining comments or suggestions from recipients about services provided by the AAA;
- 6.10(11)** Determination of an individual's eligibility for home-delivered nutrition services, including specific criteria established by the AAA for:
 - a. Initial and subsequent six-month assessments of the individual's eligibility for home-delivered meals;
 - b. Determination of the number of days per week the individual has a need for home-delivered meals;
 - c. Determination of the individual's need for other home-delivered nutrition services;
- 6.10(12)** Assurance that any facility housing a service will fully comply with all current federal, state or local health, fire, safety, sanitation, accessibility and licensure requirements;
- 6.10(13)** Methods of monitoring service providers to ensure their performance is in accordance with terms, conditions and specifications for funding, including length of funding period, and the use of project income and methods of providing service;
- 6.10(14)** If appropriate, offering a meal to individuals providing volunteer services during meal times on the same basis as meals are offered to eligible individuals;
- 6.10(15)** Offering a meal to nonelderly individuals with disabilities who reside at home with and accompany eligible older individuals to a meal site;
- 6.10(16)** Offering home-delivered meals to nonelderly individuals with disabilities when their elderly caregiver is eligible for a home-delivered meal;
- 6.10(17)** Increasing public education and awareness in the prevention of abuse, neglect and exploitation of older individuals;
- 6.10(18)** Identifying the public and private nonprofit entities involved in the prevention, identification, and treatment of abuse, neglect, and exploitation of older individuals and determining methods to respond to the needs of older individuals at risk; and
- 6.10(19)** Offering health promotion activities and information to eligible individuals.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4877C, IAB 1/15/20, effective 2/19/20]

17—6.11(231) Contracts.

6.11(1) A contract or agreement between an AAA and a provider of a specific service in the PSA shall not restrict the AAA from contracting with other provider(s) of similar services.

6.11(2) Contract file. AAA shall maintain a file of all current contracts with service-providing agencies or organizations. These files shall be made available for monitoring and assessment by the department.

6.11(3) Contracts with for-profit organizations. An AAA must request prior approval from the department of any proposed service contracts with for-profit organizations under an area plan.

a. A separate approval request, using the request form provided by the department, shall be filed for each contract between the AAA and a provider for a service that is proposed to be delivered by a for-profit organization.

(1) The request for approval shall be submitted to the department at least 30 days prior to the signing of the contract.

(2) All applicants to provide services for which the contract is proposed shall be listed on the request form.

b. The department may approve the contracts only if the AAA demonstrates that the for-profit organization can provide services that are in compliance with the Older Americans Act and consistent with the goals of the AAA as stated in the area plan.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 1534C, IAB 7/9/14, effective 8/13/14; ARC 4877C, IAB 1/15/20, effective 2/19/20]

17—6.12(231) Direct service.

6.12(1) An AAA must submit a request to provide direct service as part of the area plan. The request may be approved by the department based on documentation of the criteria given in subrule 6.12(2). The following services may be furnished directly by the AAA and are exempt from the requirements in subrule 6.12(2):

- a. Information and assistance;
- b. Outreach;
- c. Case management;
- d. Advocacy representation;
- e. Public education;
- f. Employment services;
- g. Mental health outreach;
- h. Coordination of efforts concerning the prevention of elder abuse;
- i. Options counseling.

6.12(2) Criteria. The commission may approve an AAA request to provide direct service.

a. Approval will be based upon documentation of the following as submitted by the AAA:

- (1) Direct provision of service is necessary to ensure an adequate supply of the service, and no potential provider was identified during the public hearing process; or
 - (2) The proposed service will be of comparable quality in the view of the AAA advisory council, and will meet or exceed service standards developed by the AAA; and
 - (3) The AAA can provide a service of equal quality at lower cost than another provider.
- b. The department may consider other factors including:
- (1) The demonstrated capacity of the AAA to deliver services consistently and reliably;
 - (2) The economic impact of transition from a contract provider to the AAA;
 - (3) Consideration of any possible disruption of service;
 - (4) Input from the AAA advisory council; and
 - (5) Comments from the public.

6.12(3) Conditional approval. If the criteria for approval of a request to provide direct services are not met, a condition may be placed on the area plan approval.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 2522C, IAB 5/11/16, effective 6/15/16]

17—6.13(231) Waivers of priority service expenditures.

6.13(1) An AAA shall request a waiver from the priority service expenditures in rule 17—5.5(231) if it does not propose sufficient funding to allow older individuals to have convenient access to a service. The waiver request shall be submitted with the plan or plan amendment pursuant to applicable procedures under 17—Chapter 11.

6.13(2) The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 17—5.5(231) for any category of service for which the AAA demonstrates the following:

- a. That the services being furnished by other providers meet the needs of older individuals in the PSA for that category of service; or
- b. That the AAA has made every reasonable effort to meet the need for a specific category of service.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

17—6.14(231) Requirements for service providers.

6.14(1) Contributions. The AAA shall consult with the relevant service providers and older individuals in the PSA to determine the best method for accepting voluntary contributions. As established by contract with the AAA, each service provider, including an AAA providing direct service, shall:

- a. Provide each older individual with a voluntary opportunity to contribute to the cost of the service by displaying a suggested contribution schedule that takes into consideration income ranges of eligible individuals in local communities;
- b. Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;
- c. Protect the privacy and confidentiality of each older individual with respect to the person's contributions;

d. Utilize appropriate procedures to safeguard and account for all contributions against loss, mishandling or theft by obtaining bonding for all employees and volunteers;

e. Use all contributions to expand the service for which such contribution is given. Nutrition service providers shall use all contributions to increase the number of meals served.

6.14(2) *Failure to contribute.* A provider that receives department funds may not deny any older individual a service because the person will not or cannot contribute to the cost.

6.14(3) *Obtain views of older individuals.* Each provider shall utilize procedures determined by the AAA for obtaining the views of participants about the services they receive. A report of procedures utilized and findings shall be issued by the AAA within six months of the signing of the contract.

6.14(4) *Seek other sources of funding.* Prior to requesting Title III funding, service providers shall demonstrate efforts to seek funds from other federal, state, and local sources.

6.14(5) *Compliance by service providers.* The AAA shall incorporate in its contract with each service provider an assurance that funds are used in compliance with federal guidelines.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13; ARC 1534C, IAB 7/9/14, effective 8/13/14]

17—6.15(231) Entrepreneurial activities of AAA. An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

6.15(1) *Demonstrated need—use of funds.* An AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

- a.* To further extend services and opportunities for older individuals; or
- b.* To fund new services and opportunities for older individuals provided that these services or opportunities are compatible with the AAA functions and goals.

6.15(2) *Restrictions.* The following restrictions shall apply to an AAA's engagement in entrepreneurial activities:

a. Entrepreneurial activities shall not be undertaken until they have been reviewed by the advisory council and approved by the AAA governing board.

b. An AAA that engages in entrepreneurial activities shall not create the impression that the activity is being carried on under governmental authority.

c. Funds received as a result of entrepreneurial activities shall be monitored and accounted for according to generally accepted accounting and auditing practices commensurate with the activities.

d. Entrepreneurial activities shall be pursued only if the duties and responsibilities required of AAA in this chapter are consistently provided by the AAA in a capable manner.

e. Entrepreneurial activities pursued by an AAA and groups or organizations funded by an AAA shall not have, nor present the appearance of, a conflict of interest.

f. Entrepreneurial activities shall not utilize funds received from the department for direct costs.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

17—6.16(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0744C, IAB 5/15/13, effective 6/19/13]

These rules are intended to implement Iowa Code chapter 231.

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¹ Effective date of Ch 6 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 7
AREA AGENCY ON AGING SERVICE DELIVERY

[Prior to 5/20/87, see Aging, Commission on the [20] Ch 8]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 7]

17—7.1(231) Definitions. Words and phrases as used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“*Legal assistance*” means legal advice and representation provided by an attorney to older individuals with economic or social needs and, to the extent feasible, includes counseling or other appropriate assistance by a paralegal or law student under the direct supervision of an attorney and counseling or representation by a nonlawyer where permitted by law.

“*Multipurpose senior center*” (OAA) means a community facility for the organization and provision of a broad spectrum of services, which shall include, but not be limited to, provision of health (including mental health), social, nutritional, and educational services and the provision of facilities for recreational activities for older individuals.

“*Nutrition Services Incentive Program*” or “*NSIP*” means the Nutrition Services Incentive Program established under the OAA.

“*Site*” means a facility designated for provision of congregate meals or other nutrition-related services.

“*Therapeutic menu*” means a soft, low-fat, low-sodium, or controlled calorie menu.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—7.2(231) Service delivery. If the requirements of 17—Chapter 6 are met, each AAA may contract for service delivery or provide services directly. All applicable terms, procedures and specifications of the department shall be followed contingent upon the source of funding under the Act. At a minimum, the contract for nutrition services shall include nutrient requirements for meals; food safety, including time limits for transporting food; use of project income; length of contract; cost per unit; participant evaluation surveys as available; and performance requirements to ensure accountability and monitoring.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—7.3(231) Outreach for greatest need. Each AAA shall conduct outreach efforts to identify the older individuals with greatest economic or social needs and to inform the older individuals of the availability of services. The outreach efforts shall place special emphasis on rural, low-income, minority and American Indian older individuals.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—7.4(231) Delivery of service.

7.4(1) Facility and focal points. Each AAA shall designate a focal point for a comprehensive and coordinated system of services in each served community, giving special consideration to the designation of multipurpose senior centers that currently or potentially can accommodate the collocation of services, where feasible.

7.4(2) Focal points. The area profile submitted by the AAA as required in 17—Chapter 6 shall specify the communities and facilities which are designated as focal points.

7.4(3) In the designation of focal points, the AAA shall consider:

- a. Communities with the greatest incidence of older individuals with the characteristics as given in 17—7.3(231) and the efforts of voluntary organizations in the community;
- b. The needs of participants and the delivery pattern of services funded under the Act and from other sources;
- c. The location of current multipurpose senior centers and congregate nutrition sites;
- d. The geographic boundaries of communities and natural neighborhoods; and
- e. The location of facilities suitable for designation.

7.4(4) Developing collocation of services at the focal point. The AAA shall:

- a. Encourage service providers to coordinate and collocate their services;
- b. Coordinate with public and private agencies, institutions and elected officials in the community to achieve maximum collocation, coordination, and access to other services or opportunities for the elderly;
- c. Ensure that information and referral and emergency service programs are provided;
- d. Ensure that services funded under the Act will be based at, linked to, or coordinated with focal points; and
- e. Establish guidelines for operating schedules which are convenient for older individuals in the community.

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

17—7.5(231) Funding for services and program facilities.

7.5(1) The AAA may distribute funds received from the department to a public or private nonprofit agency for construction, acquisition, remodeling, leasing or renovation of a facility, including a mobile facility, to be a focal point for providing programs or services.

a. In distributing these funds, the AAA shall obtain the approval of the commission before contracting for the construction of a facility.

b. The commission may approve the construction of a facility after considering the views of the AAA and reviewing material from the AAA that documents that there are no suitable facilities available to be a focal point for service delivery.

7.5(2) The AAA may make an award for purchasing or constructing a facility:

- a. If there are no suitable facilities for leasing;
- b. If the AAA's budget shows that sufficient funds are or will be available;
- c. To meet the nonfederal share of the cost of purchase or construction of the facility;
- d. For effective use of the facility for the purpose for which it is being acquired or constructed;
- e. To pay the cost of professional and technical personnel required for the operation of facilities used to provide services to older individuals under the cost-share terms and conditions set by the department.

7.5(3) Shared facilities. In a facility that is shared with other age groups, funds received from the Act may support only:

- a. That part of the facility used by older persons; or
- b. A proportionate share of the costs based on the extent of use of the facility for services or programs for the older individuals.

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

17—7.6(231) Compliance with health, safety and construction requirements. A recipient of any award from the department for a facility housing a program or service shall comply with all applicable state and local health, fire, safety, accessibility, building, zoning, and sanitation laws, ordinances and codes including:

1. Rules of the state fire marshal adopted pursuant to Iowa Code chapter 17A, which apply to the occupancy type of the facility;

2. Applicable requirements for accessibility of the facility to persons with disabilities, including but not limited to provisions of the state of Iowa building code, the federal Americans with Disabilities Act, federal Fair Housing Act and related regulations; and

3. Provisions of any local building code in force in the jurisdiction in which the facility is located and any provisions of the state of Iowa building code which apply statewide. If the facility is located in a jurisdiction in which no local building code is in force, the facility shall comply with the state of Iowa building code in its entirety.

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

17—7.7(231) Term of use of an acquired or constructed facility. A recipient of funds under the Act that uses these funds for the acquisition or construction of a facility housing a program or service shall

comply with the requirements of the Act and other applicable federal requirements regarding the term of use of such facility.

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

17—7.8(231) Restrictions.

7.8(1) *Membership fees.* Payment of a membership fee shall not be required of participants in programs and services offered in facilities that receive or have received funds under the Act.

7.8(2) *Sectarian use of a facility prohibited.* A facility altered, renovated, acquired, leased or constructed using funds under the Act shall not be used for sectarian instruction or as a place for religious worship.

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

17—7.9(231) Information and assistance services.

7.9(1) The AAA shall provide for information and assistance services sufficient to ensure that all older individuals within the PSA have convenient access to the services.

7.9(2) English not principal language. In a PSA in which 3 percent of the older individual population does not speak English as the principal language, the service provider must provide information and assistance services in the language spoken by older individuals.

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

17—7.10(231) Legal assistance requirements. The provisions and restrictions in this rule apply only to legal assistance providers and only when they are performing tasks covered by Section 307(a)(11) of the Act.

7.10(1) Provider requirements. The AAA shall award funds to the legal assistance provider(s) that most fully meets the standards given in this rule. The legal assistance provider(s) shall:

a. Have staff with expertise in specific areas of law affecting older individuals with economic or social needs and give priority to issues related to income, health care, long-term care, nutrition, utilities, housing, protective services, abuse, neglect, age discrimination and defense of guardianship;

b. Demonstrate the capacity to provide effective administrative and judicial representation in the areas of law affecting older individuals with economic or social needs;

c. Demonstrate the capacity to provide support to other advocacy efforts, for example, the long-term care resident's advocate program or elder abuse initiatives programs;

d. Demonstrate the capacity to deliver legal services to institutionalized, isolated, and homebound older individuals effectively;

e. Demonstrate the capacity to provide legal assistance in the principal language spoken by clients in areas where a significant number of clients do not speak English as their principal language; and

f. Coordinate the provision of legal assistance with private bar attorneys and legal services corporation state grantees.

7.10(2) Client income disclosure. A legal assistance provider shall not require an older individual to disclose information about income or resources as a condition for providing legal assistance under this rule.

7.10(3) Client information. A legal assistance provider may ask about an older individual's financial circumstances only as a part of the process of providing legal advice or counseling and representation, or for the purpose of identifying additional resources and benefits for which an older individual may be eligible.

7.10(4) Assistance allowed. Nothing in this rule is intended to prohibit an attorney or staff attorney from providing any form of legal assistance or to interfere with the fulfillment of the attorney's professional responsibilities.

7.10(5) Provider compliance with OAA regulations. The legal assistance provider and its attorney(s) and employee(s) shall comply with all federal and state laws, regulations and rules which govern ethical and professional conduct and the practice of law.

7.10(6) An AAA shall not require a provider of legal assistance to reveal information protected by attorney-client privilege.

7.10(7) The department will be responsible for the following:

- a. Providing for the coordination of the furnishing of legal assistance to older individuals within the state;
- b. Providing advice and technical assistance in the delivery of legal assistance to older individuals within the state;
- c. Supporting the provision of training and technical assistance for legal assistance for older individuals; and
- d. Assigning personnel, one of whom shall be known as a legal assistance developer, to provide state leadership in developing legal assistance programs for older individuals throughout the state.

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

17—7.11(231) Disease prevention and health promotion under Title III-D of the Act. AAA shall use Title III-D funds to provide disease prevention and health promotion services and information at multipurpose senior centers, at congregate meal sites, through home-delivered meals programs or at other appropriate sites.

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

17—7.12(231) Nutrition services.

7.12(1) Purposes of the program. The purposes of the nutrition services program are to:

- a. Provide meals and other nutrition-related services, including outreach and education to older individuals;
- b. Provide information and referral services, health and human service counseling, recreation activities, and access to nutrition services to participants when services are needed; and
- c. Provide activities of interest to older individuals on each day the congregate meal site is open including a monthly nutrition education program under the supervision of a licensed dietitian if the nutrition education provides medically oriented information.

7.12(2) Assessment of need. The AAA shall determine the best location for nutrition services within the planning and service area at least once during the long-range plan development cycle. The needs of the community will be considered in determining the locations for nutrition services.

7.12(3) Inspection of congregate nutrition sites. All congregate nutrition sites shall be inspected by the department of inspections and appeals and shall have a current food service establishment (restaurant) license posted in the congregate nutrition site.

7.12(4) The AAA shall ensure that nutrition funds are used to:

- a. Provide at least one meal per day in a congregate nutrition site or provide home-delivered meals based upon a determination of a participant's need.
- b. Provide other nutrition services to ensure that the maximum number of eligible older individuals, with emphasis on the frail, those with greatest social and economic need, and the isolated, shall have the opportunity to participate.
- c. Provide nutrition screening and counseling as appropriate and nutrition education services to address assessed needs.

7.12(5) Food assistance program. The AAA and nutrition services providers shall assist participants in taking advantage of benefits available to them under the food assistance program by providing current information to participants in both the congregate and home-delivered meals programs. Nutrition services providers shall be certified to accept food assistance as contributions for meals.

7.12(6) Licensed dietitian. Each AAA must utilize the services of a licensed dietitian to provide technical assistance in nutrition program management and to ensure that the project provides meals that comply with the RDA/AI.

7.12(7) The AAA shall develop procedures to:

- a. Ensure that food service personnel, both paid and volunteer, conform to hygienic food handling techniques and to standards given in the current edition of "Center for Food Safety and Applied Nutrition—Food Code" published by the U.S. Food and Drug Administration;
- b. Provide for ongoing training on safety, hygienic food handling and sanitation for both volunteer and paid food service personnel;

c. Ensure that food service personnel, both paid and volunteer, are provided with job descriptions and standards of performance which shall be evaluated annually; and

d. Regulate the use of foods remaining after serving at congregate meal sites.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—7.13(231) AOA NSIP programs.

7.13(1) The AAA shall have an agreement with the department to receive commodities, cash or a combination of commodities and cash.

7.13(2) The department shall allocate all food, cash or the combination of food and cash received from AOA to AAA based on each AAA's proportion of the total number of meals served to eligible recipients in the state.

7.13(3) The AAA shall comply with the requirements of 7 CFR §250, June 3, 1988, for participation in the AOA program.

7.13(4) AAA electing to receive commodities shall maintain perpetual inventories of all commodities at each site and storage area and must submit an areawide inventory at least quarterly to the department within 30 days after the reporting period.

7.13(5) AAA shall comply with provisions of state laws regarding safe and sanitary handling of food, equipment and supplies. Nutrition services providers shall accept and use foods made available by AAA.

7.13(6) Commodities shall be consumed as food only and shall not be sold, exchanged, traded, transferred, destroyed, or otherwise disposed of for any reason without prior approval from the department.

7.13(7) An AAA shall report the loss, theft, damage, spoilage, or infestation of commodities to the department within 5 working days to initiate claim action.

7.13(8) An AAA that receives cash in lieu of commodities shall spend all cash received from the AOA to purchase agricultural food items.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—7.14(231) Nutrition performance standards.

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

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

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

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

7.14(2) AAA shall ensure that the areawide percentage of residents with the greatest economic and social need is proportionately represented in the characteristics of individuals served in the nutrition program as outlined in 17—Chapter 6 for preference in service delivery.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13]

17—7.15(231) Food standards. The AAA or contractor shall, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

7.15(1) Each AAA shall establish and implement written procedures, in consultation with a licensed dietitian, on handling foods prepared for a meal but not served. The procedures shall address which foods may be saved, which foods need to be destroyed, and instructions on cooling and storing foods for reuse.

7.15(2) All raw fruits and vegetables and other foods utilized shall be free from spoilage, filth or contamination and must be safe for human consumption.

7.15(3) Foods prepared, canned or preserved noncommercially shall not be used.

7.15(4) Standardized, tested quantity recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable nutrient quality and quantity of meals.

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

17—7.16(231) Food-borne illness. The AAA shall develop written procedures for handling suspected cases of food-borne illnesses. The contractor shall report the occurrence or suspected occurrence of a food-borne illness to the AAA within 12 hours. The AAA shall notify the department within 12 hours after the AAA becomes aware of the situation.

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

17—7.17(231) Menus.

7.17(1) All menus shall be planned for a minimum of four weeks, computer analyzed to ensure 33 1/3 percent of the RDA/AI is provided in each meal, certified in writing by the licensed dietitian whose services are utilized by the AAA, and submitted to the department for review at least two weeks prior to the initial use of the menu. For purposes of audit, AAA shall keep copies of the certified menus on file for a period of one year.

7.17(2) All certified menus shall be posted in a conspicuous location in each congregate meal site and regularly provided to home-delivered meal recipients. The certified menus may be modified occasionally if the provisions of rule 17—7.15(231) are maintained and a licensed dietitian or nutrition director is consulted prior to the change.

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

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

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

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

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

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

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

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13]

17—7.19(231) Congregate nutrition services. In providing nutrition services or in making awards for congregate nutrition services, the AAA shall:

1. Select and designate as a site any location where meals are served in a group setting with federal AOA nutrition funds or contributions from an AOA federal nutrition program, or both;

2. Provide a site in as close proximity to the majority of eligible individuals' residences as feasible, preferably within walking distance, or where transportation is available;

3. Provide for hot or other appropriate meals at least once a day, five or more days a week. In a county where there is a site providing meals five or more days a week, additional sites may be established which provide meals one or more days a week. Efforts shall be made and documented to the department annually to increase the number of serving days to a minimum of three days each week;

4. Coordinate with other community providers to arrange meals for older individuals on holidays that occur on regularly scheduled serving days and also to the general public in weather- and disaster-related emergencies, where feasible.

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

17—7.20(231) Eligibility for meals at congregate nutrition sites.

7.20(1) A person aged 60 or older and the spouse of the person, regardless of age, are eligible to participate in congregate nutrition services.

7.20(2) Individuals providing volunteer services during meal hours are eligible to participate in congregate nutrition services.

7.20(3) Individuals with disabilities who reside at home or reside with and accompany eligible older individuals are eligible to participate in congregate nutrition services.

7.20(4) Individuals with disabilities who are not 60 years of age or older and who reside in housing facilities occupied primarily by older individuals at which congregate nutrition services are provided are eligible to participate in congregate nutrition services.

7.20(5) Ineligible individuals may eat at a site and pay the programmatic cost of the meal, if the ineligible individual's receipt of the meal does not deprive an eligible participant of a meal.

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

17—7.21(231) Home-delivered meals.

7.21(1) Eligibility. An older individual who is homebound by reason of illness, incapacitating disability or other cause is eligible to receive home-delivered meals. Regardless of age or condition, the spouse of an older individual may receive home-delivered meals if receipt of the meal is in the best interest of the homebound older individual under criteria set by the AAA.

7.21(2) Individual assessment. The AAA or the home-delivered meals contractor, subject to AAA approval, shall establish and utilize procedures for the determination of an older individual's eligibility for home-delivered meals, including specific criteria for:

- a. Initial assessment of the older individual's eligibility;
- b. Determination of the number of days per week the older individual has a need for home-delivered meals; and
- c. Determination of the older individual's need for other home-delivered nutrition services.

7.21(3) Requirements for providers. The AAA or contractor shall:

- a. Provide for home-delivered meals at least once a day, five or more days a week;
- b. Provide for home-delivered meals to participants according to the frequency of need determined by procedures required in subrule 7.21(2). Meals may be hot, cold, frozen, dried, canned or supplemental foods with a satisfactory storage life;
- c. Make arrangements for the availability of meals to older individuals in weather- and disaster-related emergencies, where feasible;
- d. Provide other nutrition and supportive services either directly or through referral to meet the need of the homebound older individual;
- e. Provide monthly nutrition education for home-delivered meal recipients, to include safe food handling of the delivered meals every six months;
- f. With the consent of the older individual or the older individual's representative, bring to the attention of appropriate officials for follow-up conditions or circumstances which place the older individual or the household in imminent danger. The AAA shall coordinate with other agencies to provide services to the homebound older individual to reduce dependency and cultural, social and geographic isolation caused by noneconomic factors.

The provider is not required to provide meals more than five days per week, but is encouraged to do so.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 3139C, IAB 6/21/17, effective 7/26/17]

17—7.22(231) Noncompliance. When a grantee fails to meet the nutrition requirements as provided in this chapter, the department shall follow procedures outlined in 17—Chapter 4.

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

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

1. Reasons for the action;

2. Impact on eligible individuals;
3. Impact on nearby meal sites; and
4. Impact on provision of nutrition-related services.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 0623C, IAB 3/6/13, effective 4/10/13]

17—7.24(231) Evaluation of sites. The AAA shall conduct on-site evaluations on an annual basis. The reports of these evaluations shall be kept on file for three years and shall include any areas that need additional monitoring or corrective actions.

7.24(1) At a minimum, the evaluation shall include the site's compliance with:

- a. Food acquisition, handling and safety standards;
- b. The requirement for the RDA/AI as established in this chapter;
- c. Food quality and acceptability (appearance, taste, temperature and smell);
- d. Services provided in addition to meals, such as nutrition education and counseling as appropriate, social opportunities and other activities.

7.24(2) The AAA shall provide each site a tool to guide food service personnel in a self-assessment to be conducted at midpoint between AAA on-site evaluations. This evaluation shall be conducted to document program compliance and to analyze areas for ongoing monitoring. The self-assessment reports shall be kept on file for three years.

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

These rules are intended to implement Iowa Code chapter 231.

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¹ Effective date of 20—8.42(2) delayed 70 days by the Administrative Rules Review Committee.

² Two or more ARCs

³ Effective date of Chapter 7 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 8
LONG-TERM CARE OMBUDSMAN
[Prior to 5/20/87, see Aging, Commission on the[20] rules 4.2 and 9.6]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 8]

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care ombudsman, which are established in Iowa Code sections 231.42 and 231.45 and in accordance with Section 712 of the Older Americans Act. This chapter also establishes criteria for serving under the certified volunteer long-term care ombudsman program. The long-term care ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes. In addition, this chapter establishes the process for representatives of the office of the state long-term care ombudsman who are local long-term care ombudsmen performing managed care ombudsman services to provide assistance and advocacy related to long-term services and supports under the Medicaid program. [ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14; ARC 4878C, IAB 1/15/20, effective 2/19/20]

17—8.2(231) Interference.

8.2(1) A local long-term care ombudsman or certified volunteer long-term care ombudsman who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home or to medical and social records while in the course of conducting official duties pursuant to Iowa Code section 231.42 or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care ombudsman, who will report the interference to the director of the department on aging.

8.2(2) Access to facility records. Copies of a resident's medical or social records maintained by the facility, or other records of a long-term care facility, assisted living program, or elder group home, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident. All medical and social records shall be made available to a certified volunteer long-term care ombudsman for review if:

- a. The certified volunteer long-term care ombudsman has written permission from the resident, the legal representative of the resident, or the responsible party; and
- b. Access to the records is necessary to investigate a complaint; and
- c. The certified volunteer long-term care ombudsman obtains approval of the state long-term care ombudsman or designee.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.3(231) Monetary civil penalties—basis. The director, in consultation with the state long-term care ombudsman, may impose a monetary civil penalty of not more than \$1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state, a local, or a certified volunteer long-term care ombudsman. If the director imposes a penalty for a violation under this rule, no other state agency shall impose a penalty for the same interference violation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 9349B, IAB 2/9/11, effective 3/16/11; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.4(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.

5. Instructions for responding to the notice, including information on the individual's right to appeal.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.5(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil penalty for interference with the official duties of a long-term care ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

[ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14]

17—8.6(231) Certified volunteer long-term care ombudsman program.

8.6(1) Application. Any individual may apply to the office of the state long-term care ombudsman program to become a certified volunteer long-term care ombudsman.

a. Application forms. Application forms may be obtained from the office of the state long-term care ombudsman program at the department on aging address listed in 17—subrule 2.3(2) or from other organizations designated by the department.

b. Submission of forms. Each applicant shall complete an application and submit it to the department address listed in 17—subrule 2.3(2).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the certified volunteer long-term care ombudsman program must not have a conflict of interest or have had a conflict of interest within the past two years in accordance with the Older Americans Act. A conflict of interest shall be defined as:

(1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;

(2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;

(3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;

(4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

(5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;

(6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;

(7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care ombudsman for the performance of an act in the regular course of long-term care;

(8) Provision of services while employed in a position with duties that conflict with the duties of a certified volunteer long-term care ombudsman;

(9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or

(10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

b. Immediate family shall be defined as father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

8.6(3) Applicants shall not be accepted into the program if:

a. It is determined that the applicant has a conflict of interest as listed in subrule 8.6(2); or

b. The applicant has unfavorable references, which shall include a DCI criminal background check and abuse check;

c. The applicant lives in any part of a continuing care retirement community, or any housing owned by the long-term care facility in which the volunteer would function.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the office of the state long-term care ombudsman. Successful completion shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the certified volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 12 hours of approved training, which shall include, but not be limited to:

- a.* History and overview of resident's advocate/ombudsman program;
- b.* Terminology;
- c.* Resident rights;
- d.* State and federal law, rules and regulations regarding long-term care facilities;
- e.* Regulatory process in long-term care facilities;
- f.* Aging process, common medical conditions and terminology;
- g.* Life in a long-term care facility and culture change;
- h.* Communication skills;
- i.* Confidentiality;
- j.* Problem solving and documentation, and follow-up of complaints;
- k.* Dynamics of abuse and neglect;
- l.* Ethics; and
- m.* Resources for certified volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a certified volunteer long-term care ombudsman shall be made by the office of the state long-term care ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The office of the state long-term care ombudsman has the right to require that the applicant receive additional personal training prior to certification and has the right to deny certification to applicants not meeting the above training criteria.

8.6(6) Certification.

a. Notification. A certified volunteer long-term care ombudsman shall be notified in writing within 14 days following the conclusion of the training program if certification has been continued or revoked.

b. Certification shall initially be for one year, with recertification available following the certified volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the office of the state long-term care ombudsman.

c. After the certified volunteer's successful completion of one year as a certified volunteer long-term care ombudsman, the office of the state long-term care ombudsman may recertify the certified volunteer for a two-year period.

8.6(7) Continuing education.

a. All certified volunteer long-term care ombudsmen shall complete a minimum of ten hours of continuing education the first year and a minimum of six hours of continuing education each year thereafter. Continuing education may include, but is not limited to:

(1) Scheduled telephone conference calls with representatives from the office of the state long-term care ombudsman program;

(2) Governor's conference on aging;

(3) Area Alzheimer's disease conferences;

(4) Elder abuse conferences;

(5) Courses related to aging conducted by a local community college or university or via the Internet;

(6) Other events as approved in advance by the office of the state long-term care ombudsman.

b. Certified volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the office of the state long-term care ombudsman or designee within 30 days following the completion of the continuing education event.

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a certified volunteer shall do so in writing to the office of the state long-term care ombudsman. The final determination shall be made by the office of the state long-term care ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. Reasons for revocation. A certified volunteer long-term care ombudsman's certification may be revoked by the office of the state long-term care ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a certified volunteer long-term care ombudsman without proper certification, attending less than the required continuing education training, voluntary termination, unprofessional conduct, failure to carry out the duties as assigned, or actions which are found by the office of the state long-term care ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The office of the state long-term care ombudsman shall notify the certified volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the office of the state long-term care ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The office of the state long-term care ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.6(10) Access.

a. Visits to facilities. A certified volunteer long-term care ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the certified volunteer long-term care ombudsman's presence, the certified volunteer long-term care ombudsman may communicate privately and without restriction with any resident who consents to the communication.

b. Visits to resident's living area. The certified volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

8.6(11) Duties. The certified volunteer long-term care ombudsman shall assist the office of the state long-term care ombudsman or designee in carrying out the duties described in the Older Americans Act. Primary responsibilities of a certified volunteer long-term care ombudsman shall include:

a. Conducting initial inquiries regarding complaints registered with the office of the state long-term care ombudsman;

b. At the request of the office of the state long-term care ombudsman or designee, providing follow-up visits on cases investigated by the office of the state long-term care ombudsman or designee;

c. Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;

d. At the request of the office of the state long-term care ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;

e. Tracking, monitoring and following up on publicly available information regarding facility performance;

f. Identifying concerns in a facility;

g. Completing all reports and submitting them to the office of the state long-term care ombudsman in a timely manner; and

h. Completing exit interviews when the certified volunteer ombudsman resigns.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 8939B, IAB 7/14/10, effective 7/1/10; ARC 1535C, IAB 7/9/14, effective 8/13/14; ARC 3714C, IAB 3/28/18, effective 5/2/18]

17—8.7(231) Managed care ombudsman program.

8.7(1) The office of the long-term care ombudsman may provide advocacy and assistance to eligible recipients, or the families or legal representatives of such eligible recipients, of long-term services and

supports provided through the Medicaid program who are receiving services in a long-term care facility or under one of the home- and community-based services waivers.

8.7(2) Representatives of the office of long-term care ombudsman providing an individual with assistance and advocacy services authorized under Iowa Code section 231.44 shall be provided access to the individual and to the individual's medical, social and administrative records related to the provision of the long-term services and supports to the individual, as authorized by the individual or the individual's legal representative, as necessary to carry out the duties specified by Iowa Code section 231.44.

8.7(3) The office of long-term care ombudsman and representatives of the office, when providing assistance and advocacy services under Iowa Code section 231.44, shall be considered a health oversight agency as defined in 45 CFR §164.501 for the purposes of health oversight activities described in 45 CFR §164.512(d). Recipient information available to the office of long-term care ombudsman and representatives of the office under this subrule shall be limited to the recipient's protected health information as defined in 45 CFR §160.103 for the purpose of recipient case resolution.

[ARC 4878C, IAB 1/15/20, effective 2/19/20]

These rules are intended to implement Iowa Code sections 231.42 and 231.44.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

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[Filed ARC 3714C (Notice ARC 3479C, IAB 12/6/17), IAB 3/28/18, effective 5/2/18]

[Filed ARC 4878C (Notice ARC 4547C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

¹ Effective date of subrule 20—4.2(1) delayed 70 days by the Administrative Rules Review Committee. (IAB 12/22/82). Delay lifted by Committee on January 4, 1983.

² Effective date of Ch 8 delayed 70 days by the Administrative Rules Review Committee.

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 9]

CHAPTER 9
RESIDENT ADVOCATE COMMITTEES
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 9]
Rescinded **ARC 1536C**, IAB 7/9/14, effective 8/13/14

CHAPTER 10
OLDER AMERICAN COMMUNITY SERVICE
EMPLOYMENT PROGRAM
[Prior to 5/20/87, see Aging, Commission on the [20] rules 8.67 to 8.70]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch10]
Rescinded **ARC 4879C**, IAB 1/15/20, effective 2/19/20

CHAPTER 11
WAIVERS FROM ADMINISTRATIVE RULES
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 11]

17—11.1(17A,231,ExecOrd11) Definitions. For purposes of this chapter:

“*Department*” means the department on aging.

“*Director*” means the director of the department on aging.

“*Waiver*” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or program on the basis of the particular circumstances of that person or program.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 5955C, IAB 10/6/21, effective 11/10/21]

17—11.2(17A,231,ExecOrd11) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department in situations where no other more specifically applicable law provides for waivers. 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 chapter with respect to any waiver from that rule. Specific waiver provisions are provided in 17—Chapters 4, 6 and 9.

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

17—11.3(17A,231,ExecOrd11) Applicability of chapter. 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.

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

17—11.4(17A,231,ExecOrd11) Criteria for waiver. In response to a petition completed pursuant to rule 17—11.6(17A,231,ExecOrd11), 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:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

4. 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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 5955C, IAB 10/6/21, effective 11/10/21]

17—11.5(17A,231,ExecOrd11) Filing of petition. A petition for a waiver must be submitted in writing to the Director, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025, as follows:

11.5(1) Certificate application. If the petition relates to a certificate application, the petition shall be made in accordance with the filing requirements for the certificate in question and submitted to the department.

11.5(2) 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, and submitted to the department.

11.5(3) Other. If the petition does not relate to a certificate application or contested case, the petition may be submitted to the department.

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

17—11.6(17A,231,ExecOrd11) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in 17—11.4(17A,231,ExecOrd11). 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.
5. A history of any prior contacts between the department and the petitioner relating to the regulated activity or certificate affected by the proposed waiver, including a description of each affected certificate held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or certificate within the last five years.
6. Any information known to the requester regarding the department's treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

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

17—11.7(17A,231,ExecOrd11) 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's appropriate staff person, or a committee of the department.

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

17—11.8(17A,231,ExecOrd11) Notice. The department shall acknowledge a petition upon its receipt in the department's office. The department shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the department attesting that notice has been provided.

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

17—11.9(17A,231,ExecOrd11) 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 and shall otherwise apply to agency proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

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

17—11.10(17A,231,ExecOrd11) 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.

11.10(1) 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.

11.10(2) *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.

11.10(3) *Narrowly tailored.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

11.10(4) *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.

11.10(5) *Conditions.* The department may place any condition on a waiver that the department finds desirable to protect the public health, safety, and welfare.

11.10(6) *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.

11.10(7) *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.

11.10(8) *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.

11.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter 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.

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

17—11.11(17A,22,231,ExecOrd11) 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 that the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

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

17—11.12(17A,22,231,ExecOrd11) Summary reports. Semiannually, the department shall prepare a summary report identifying 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 detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

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

17—11.13(17A,231,ExecOrd11) Cancellation of a waiver. A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. 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
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

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

17—11.14(17A,231,ExecOrd11) Violations. 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 chapter 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.

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

17—11.15(17A,231,ExecOrd11) Defense. After the department issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

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

17—11.16(17A,231,ExecOrd11) Judicial review. Judicial review of a department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the department pursuant to Iowa Code section 17A.19.

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

17—11.17(17A,231,ExecOrd11) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid of unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

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

These rules are intended to implement Iowa Code chapters 17A, 22, 231 and 249H and Executive Order Number 11.

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[Filed 12/28/07, Notice 9/12/07—published 1/30/08, effective 3/5/08]

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

[Filed ARC 5955C (Notice ARC 5791C, IAB 7/28/21), IAB 10/6/21, effective 11/10/21]

CHAPTER 12
ELDER ABUSE, NEGLECT OR EXPLOITATION PREVENTION AND
AWARENESS AND MANDATORY REPORTER TRAINING

[Prior to 3/15/06, see 321—7.7(231)]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 12]

Rescinded IAB 2/24/10, effective 3/31/10

CHAPTER 13
RULES AND PRACTICES IN CONTESTED CASES
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 13]

17—13.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department on aging.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Commission*” means the commission on aging as established in Iowa Code chapter 231.

“*Contested case*” means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

“*Department*” means the department on aging.

“*Director*” means the director of the department.

“*Issuance*” means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

“*Party*” means each person or department named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

“*Presiding officer*” means the commission, the commission’s designee or an administrative law judge.

“*Proposed decision*” means the presiding officer’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.3(17A) Time requirements.

13.3(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

13.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.5(17A) Notice of hearing.

13.5(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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

13.5(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

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

17—13.6(17A) Presiding officer.

13.6(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer.

13.6(2) The department on aging may deny the request only upon a finding that one or more of the following apply:

a. Neither the department nor any officer of the department under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. An administrative law judge is unavailable to hear the case within a reasonable time.

d. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

e. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

f. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

g. The request was not timely filed.

h. The request is not consistent with a specified statute.

13.6(3) The department shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed.

13.6(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the department. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

13.6(5) Unless otherwise provided by law, agency heads and members of multimembered agency heads, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

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

17—13.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

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

17—13.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

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

17—13.9(17A) Disqualification.

13.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

13.9(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17(3) and subrules 13.9(3) and 13.23(9).

13.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

13.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 13.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 17—13.25(17A) and seek a stay under rule 17—13.29(17A).

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

17—13.10(17A) Consolidation—severance.

13.10(1) Consolidation. The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

- a. The matters at issue involve common parties or common questions of fact or law;
- b. Consolidation would expedite and simplify consideration of the issues involved; and
- c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

13.10(2) Severance. The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.11(17A) Pleadings.

13.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

13.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

13.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

13.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.12(17A) Service and filing of pleadings and other papers.

13.12(1) When service required. Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

13.12(2) Service—how made. Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

13.12(3) Filing—when required. After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Suite 2, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

13.12(4) Filing—when made. Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

13.12(5) Proof of mailing. Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

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

17—13.13(17A) Discovery.

13.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

13.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 13.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

13.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

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

17—13.14(17A) Subpoenas.

13.14(1) Issuance.

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

13.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

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

17—13.15(17A) Motions.

13.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

13.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

13.15(3) The presiding officer may schedule oral argument on any motion.

13.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the department or an order of the presiding officer.

13.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from

the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 17—13.28(17A) and appeal pursuant to 17—13.27(17A).

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

17—13.16(17A) Prehearing conference.

13.16(1) *Any party may request a prehearing conference.* A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the department to all parties.

For good cause the presiding officer may permit variances from this rule.

13.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

13.16(3) In addition to the requirements of subrule 13.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

13.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

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

17—13.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

13.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The department may waive notice of such requests for a particular case or an entire class of cases.

13.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—13.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. Unless otherwise provided, a withdrawal shall be with prejudice.

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

17—13.19(17A) Intervention.

13.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

13.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

13.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

13.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

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

17—13.20(17A) Hearing procedures.

13.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

13.20(2) All objections shall be timely made and stated on the record.

13.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

13.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

13.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

13.20(6) Witnesses may be sequestered during the hearing.

13.20(7) The presiding officer shall conduct the hearing in the following manner:

- a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- b. The parties shall be given an opportunity to present opening statements;
- c. Parties shall present their cases in the sequence determined by the presiding officer;
- d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;
- e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

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

17—13.21(17A) Evidence.

13.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

13.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

13.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

13.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

13.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

13.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

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

17—13.22(17A) Default.

13.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

13.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

13.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 17—13.27(17A). A motion to vacate must state all facts relied upon by the moving party which establishes that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

13.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

13.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

13.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

13.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 17—13.25(17A).

13.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

13.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

13.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 17—13.29(17A).

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

17—13.23(17A) Ex parte communication.

13.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 13.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

13.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

13.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

13.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 17—13.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

13.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

13.23(6) The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 13.23(1).

13.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 17—13.17(17A).

13.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

13.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

13.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to the commission on aging for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

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

17—13.24(17A) Recording costs. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

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

17—13.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

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

17—13.26(17A) Final decision.

13.26(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

13.26(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 17—13.27(17A).

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

17—13.27(17A) Appeals and review.

13.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

13.27(2) *Review.* The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

13.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

13.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

13.27(5) *Scheduling.* The department shall issue a schedule for consideration of the appeal.

13.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

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

17—13.28(17A) Applications for rehearing.

13.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

13.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 13.27(4), the applicant requests an opportunity to submit additional evidence.

13.28(3) *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

13.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

13.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

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

17—13.29(17A) Stays of department actions.

13.29(1) *When available.*

a. Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the department. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commission may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

13.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

13.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

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

17—13.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

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

17—13.31(17A) Emergency adjudicative proceedings.

13.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

13.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department’s decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the department;

(3) Certified mail to the last address on file with the department;

(4) First-class mail to the last address on file with the department; or

(5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

13.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

13.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing.

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

17—13.32(17A) Informal settlement.

13.32(1) A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

a. Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

b. When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.

c. Where there are more than two parties to a controversy before the department, a separate settlement between one party and the department is permissible.

d. A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

13.32(2) A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

a. Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

b. When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

c. Where there are more than two parties to a contested case proceeding involving the department, a separate settlement between one party and the department is permissible.

d. A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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

These rules are intended to implement Iowa Code chapters 17A and 231.

[Filed 12/28/07, Notice 9/12/07—published 1/30/08, effective 3/5/08]

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

CHAPTER 14
IOWA FAMILY CAREGIVER SUPPORT PROGRAM
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 14]

17—14.1(231,249H) Purpose. The purpose of the family caregiver support program is to provide support services for family caregivers for older individuals and for grandparents or persons who are relative caregivers of children. The program shall be called the Iowa family caregiver support program. [ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.2(231,249H) Definitions. Words and phrases used in this chapter are as defined in 17 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Child*” means an individual who is not more than 18 years of age or who is an individual with a disability.

“*Family caregiver*” means an adult family member, 18 years of age or older, or another adult individual selected by the consumer or the consumer’s legal representative, who is an informal provider of in-home or community care to an older individual or to a person of any age with Alzheimer’s disease, a related disorder, or a neurological or organic brain dysfunction.

“*Grandparent*” or “*relative caregiver*” means a grandparent or stepgrandparent of a child; or a relative of a child by blood, marriage or adoption who is not a parent and who is 55 years of age or older and:

1. Lives with the child; and
2. Is the primary caregiver of the child because the biological or adoptive parent is unable or unwilling to serve as the primary caregiver of the child; and
3. Has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

“*Older individual*” means a person 60 years of age or older.

“*Respite care*” means temporary, substitute support or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers.

“*Supplemental services*” means services or items that are provided on a limited basis to complement the care provided by the caregiver.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.3(231,249H) Eligibility for services. In order to be eligible for services under this chapter, a family caregiver shall be providing informal in-home or community care to:

1. An older individual; or
2. A person of any age with Alzheimer’s disease, a related disorder, or a neurological or organic brain dysfunction; or
3. A child or children not more than 18 years of age; or
4. An adult child or children aged 19 through 59 with a disability.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.4(231,249H) Priorities for service. In determining eligibility for services for categories as defined in rule 17—14.3(231,249H) of this chapter, equal priority shall be given to persons in all categories listed below. Each area agency on aging (AAA) will determine if the grandparent component of the program is offered based on the availability of funds.

Family Caregivers	Grandparents and Relative Caregivers
Individuals of any age with Alzheimer's disease or related disorders.	Children with severe disabilities.
Older individuals with the greatest social and economic needs (with particular attention to low-income individuals) who are providing care to individuals 60 years of age or older.	Older individuals with the greatest social and economic needs (with particular attention to low-income individuals) who are providing care to individuals 60 years of age or older.
	Older individuals providing care to persons with severe disabilities, including children with severe disabilities.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.5(231,249H) Coordination. The AAA and AAA contractors shall coordinate activities with other community agencies and volunteer organizations to provide the types of services described in this chapter.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.6(231,249H) Service categories. Each AAA shall provide all of the following categories of service under this chapter. Services may be provided to individuals or to groups directly, or through contract procedures as specified in 17 IAC 6. The services include:

14.6(1) Information about available services. This may include, but is not limited to, providing to family caregivers newsletters, seminars or other types of group presentations which identify and explain the various services that may be available.

14.6(2) Access to services. This may include, but is not limited to: information, assistance, referral, outreach, and adequate follow-up procedures to ensure that, to the maximum extent practicable, individuals receive the needed services that are available within their communities.

14.6(3) Counseling, training and support groups. This may include, but is not limited to, the following services:

a. Individual or group support programs that develop or strengthen informal or family support systems.

b. Formal or informal opportunities for individuals to acquire knowledge, experience or skills in caregiving.

c. Counseling to enable the caregiver and family to resolve problems or to relieve temporary stresses. Mental health and behavioral health services shall be provided by a mental health professional licensed in this state.

14.6(4) Respite care. This may include, but is not limited to:

a. In-home respite.

b. Respite provided by the care recipient attending an adult day service program, senior center or other nonresidential program.

c. Institutional respite provided by placing the recipient in a setting such as a nursing facility for a short period of time.

d. Children attending summer camps or similar short-term care while the children are being cared for by grandparents.

14.6(5) Supplemental services. This may include, but is not limited to:

a. Chore services such as heavy housework, yard work, or sidewalk maintenance.

b. An emergency in-home or wearable response system.

c. Legal assistance.

d. Material aid in the form of goods or services such as food, smoke detectors, eyeglasses, security devices, or other similar aid.

e. Assisted transportation using vehicles which may include provision of assistance, including an escort, to a person with physical or cognitive difficulties.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.7(231,249H) Conflict of interest. Conflict of interest includes any action or failure to act that may be an actual or perceived conflict between official duties and personal interest. Conflict of interest exists when the family caregiver program or any entity or individual:

1. Uses an official position for private gain (other than salary).
2. Gives preferential treatment to any entity or individual or fails to act impartially in the conduct of official duties.
3. Impedes or adversely affects governmental efficiency or economy.
4. Engages in conduct that could adversely affect the confidence of the public in the integrity of the family caregiver program.
5. Creates circumstances where it might reasonably be perceived that an entity's or individual's judgment could be influenced by the nature of the circumstances.
6. Uses any property of the person giving care or the person receiving care for personal use.
7. Provides another direct service to a consumer assigned to the family caregiver program.
8. The family caregiver program disproportionately chooses one provider over another provider or indicates it may be attempting to influence the selection of a specific provider.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.8(231,249H) Confidentiality. Except by written consent of the consumer or the consumer's legal representative, the use or disclosure by any person of any information concerning a consumer for any purpose not directly connected with the administration of the responsibilities of the department, AAA, or authorized service provider is prohibited.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.9(231,249H) Quality standards.

14.9(1) AAA staff requirements. Each AAA shall:

- a.* Evaluate the full-time equivalent for its family caregiver program, considering current funding levels among other factors, and shall staff the program to best meet the needs of the service delivery area.
- b.* Employ or contract for a designated family caregiver specialist with the following demonstrated competencies:

(1) A bachelor's degree in the human services field or an associate's degree in the human services field and two years of employment in information and referral positions, which may be substituted for a bachelor's degree. Family caregiver specialists employed prior to April 1, 2009, are exempt from this requirement.

(2) If the applicant or prospective contractor does not have the certification required in paragraph "a" of subrule 14.9(2), the applicant shall have three years of prior employment in information and referral positions.

14.9(2) Certification.

a. A family caregiver specialist shall possess and maintain a current Certification for Information and Referral (I&R) Specialists in Aging (CIRS-A) from the Alliance of Information and Referral Systems at the time of employment or contract; or

b. If employed on or prior to April 1, 2009, a family caregiver specialist shall obtain the certification required in paragraph "a" of this subrule within six months of April 1, 2009, or upon meeting eligibility requirements for certification which include:

- (1) At least one year of employment in I&R for specialists with a bachelor's or higher degree; or
- (2) Two years of employment in I&R for specialists with an associate's/community college degree;

or

- (3) Three years of employment in I&R for specialists with a high school diploma or GED.

c. Part-time staff and volunteers shall possess and maintain a CIRS-A.

14.9(3) Training. The family caregiver specialist shall attend during the term of employment annual and other family caregiver specialist training when provided by the department.

14.9(4) Local contract monitoring. The AAA shall utilize a system to monitor all service providers' performance under the contract and promptly ensure that any problems that arise are corrected. All contracts shall be created and monitored under the provisions of 17—6.11(231) or 17—5.15(231), as applicable.

a. For the purposes of this subrule, monitoring means any planned, ongoing, or periodic activity that measures outcomes and ensures contractor compliance with the terms and conditions of the contract and customer satisfaction and also ensures that the contractor meets the needs of the caregiver.

b. The AAA shall conduct caregiver evaluations to determine the quality of services and goods provided, including but not limited to customer satisfaction surveys, inspections, and evaluation of goods and services provided.

c. Monitoring activities shall include:

(1) Periodic contact, including on-site visits, to maintain a continuous dialogue with the contractor and to review progress on a regular basis.

(2) Requiring the contractor to submit progress reports or other appropriate data based on predefined contract criteria. These reports shall include documentation indicating where and how moneys received were expended and results of caregiver performance evaluations and customer satisfaction surveys.

(3) Reviewing the contractor's reports and verifying the services provided to determine if those services adhere to the contract. Substandard performance shall be identified and addressed appropriately, up to and including cancellation of the contract. Any corrective action shall be completed as soon as possible to maintain quality service to the consumer.

(4) Comparing contract billings with the terms contained in the contract to ensure that costs or payments are within contract parameters.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.10(231,249H) Reports. The AAA shall record all services and submit all fiscal and performance reports for this program to the department in accordance with current instructions issued by the department.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.11(231,249H) Failure to meet program requirements; waiver of standards. When an AAA fails to meet the requirements of this chapter, the department shall follow procedures outlined in 17 IAC 4. Provisions of this chapter may be waived pursuant to 17 IAC 11.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—14.12(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 7599B, IAB 2/25/09, effective 4/1/09; ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 231 and 249H.

[Filed ARC 7599B (Notice ARC 7456B, IAB 12/31/08), IAB 2/25/09, effective 4/1/09]

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

CHAPTER 15
ELDER ABUSE PREVENTION AND AWARENESS

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 15]

[Prior to 2/24/10, see also 17—Ch 12]

17—15.1(231) Purpose. This chapter establishes the elder abuse prevention initiative as a method of providing prevention, intervention, detection, and reporting of abuse, neglect, and exploitation of older individuals and of providing service options for at-risk older adults. This chapter also establishes criteria for certifying trainers to provide dependent adult abuse mandatory reporter training.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.2(231) Definitions. Words and phrases used in this chapter are as defined in 17 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“*Abuse*” means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or the deprivation by a person, including a caregiver, of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness in an older individual.

“*Adequate food, shelter, clothing, or other care*” means food, shelter, clothing, or other care which, if not provided, would constitute denial of critical care.

“*Assessment*” means a document designated by the department to be completed by a contractor to determine service needs and address the safety of the client.

“*Assessment intake*” means the process by which a contractor receives and records reports of suspected elder abuse.

“*At-risk older individual*” or “*client*” means a person aged 60 or older who is at risk for or experiencing abuse, neglect, self-neglect, or exploitation.

“*Caregiver*” means an individual who has the responsibility for the care of an older individual, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law. “Caregiver” also means a family member or other individual who provides compensated or uncompensated care to an older individual.

“*Case*” means a referral of suspected elder abuse that has been accepted for assessment and services.

“*Contractor*” means the contract recipient.

“*Coordinator*” means the contractor’s designee who is responsible for coordinating elder abuse prevention initiative services and who is the central point of contact for case files, subcontractors, and care providers.

“*Department*” means the department on aging.

“*Elder abuse*” means abuse of an older individual and may consist of abuse, neglect, self-neglect, or exploitation.

“*Exploitation*” means an individual’s, including a caregiver’s or legal representative’s, use of the resources of an older individual for monetary or personal benefit, profit, or gain that results in depriving an older individual of rightful access to, or use of, benefits, resources, belongings, or assets.

“*Immediate danger to health and safety*” means a situation in which death or severe bodily injury could reasonably be expected to occur without intervention.

“*Legal representative*” means a person appointed by the court to act on behalf of a client.

“*Mandatory reporter*” means a person defined in Iowa Code section 235B.3(2).

“*Neglect*” means the failure of a caregiver or legal representative to provide the goods or service necessary to maintain the health or safety of an older individual.

“*Older individual*” means a person aged 60 or older.

“*Physical harm*” means bodily injury, impairment, or disease.

“*Purchase of service form*” means the mechanism used to document and request approval for the purchase of a specific service on behalf of a client.

“*Referral*” means any information received by a contractor from any source that identifies an individual aged 60 or older as experiencing, or at risk of, abuse, neglect, or exploitation.

“Self-neglect” means an older individual’s inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks, including obtaining essential food, clothing, shelter, and medical care; obtaining goods and services necessary to maintain physical health, mental health, or general safety; or managing one’s own financial affairs.

“Service provider” means a provider receiving funds from a contractor.
[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.3(231) Project administration. In any year in which funds are available for the elder abuse prevention initiative, the department shall contract with local agencies or organizations to administer available funds and to study and evaluate community-based projects and educational programs for the prevention of elder abuse. The contractors shall utilize the funds to provide community-based services for older individuals who have been the subject of suspected elder abuse or for the provision of educational programs to raise awareness about elder abuse. Agencies or organizations that receive elder abuse prevention initiative funds shall submit a proposal to the department one month prior to the commencement of the fiscal year. Proposals shall contain the following:

1. Project summary, including issues the project will address;
2. Projection of the number of older individuals to be served;
3. Description of services to be provided;
4. Description of community support for the project;
5. Designation of evaluation and audit mechanisms;
6. Project budget; and
7. Evaluation plan.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.4(231) Contractor responsibilities.

15.4(1) A contractor or subcontractor shall have a designated coordinator to administer elder abuse prevention initiative funds and services who meets all of the following qualifications:

- a. A bachelor’s degree in a human services field and a minimum of four years of experience in a human services and gerontology field. A contractor may submit a request in writing to the department for an exception to this requirement for any coordinator hired after April 1, 2010;
- b. Completion of dependent adult abuse mandatory reporter training requirements in accordance with Iowa Code section 235B.16 prior to direct client contact;
- c. Completion of orientation and training provided by the department prior to direct client contact related to utilization of the assessment tool; service coordination and monitoring; performance measures and outcome evaluation; advocacy and public awareness training; and
- d. Eight hours of annual training related to dependent adult or elder abuse.

15.4(2) Staff members utilized by a contractor or subcontractor to provide services shall meet all of the following qualifications:

- a. A minimum of two years of experience in the human services field;
- b. Completion of dependent adult abuse mandatory reporter training requirements in accordance with Iowa Code section 235B.16 prior to direct client contact; and
- c. Completion of orientation and training provided by the department related to utilization of the assessment tool; service coordination and monitoring; performance measures and outcome evaluation; advocacy and public awareness training prior to direct client contact.

15.4(3) A contractor shall utilize the assessment forms, purchase of services forms, procedures, and software systems specified by the department.

15.4(4) A contractor shall ensure that:

- a. Record checks have been conducted for any coordinator, staff member, volunteer, or other person who performs duties under a contract or subcontract who:
 - (1) Has direct responsibility for the client, or
 - (2) Has access to a client when the client is alone.
- b. The record checks shall be conducted to determine whether the person:
 - (1) Has any founded child abuse reports;

- (2) Has any founded dependent adult abuse reports;
- (3) Has any criminal convictions; or
- (4) Has been placed on the sex offender registry.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.5(231) Funding restrictions. The use of funding is restricted as follows:

1. A contractor shall determine that the client is not eligible to receive services under another funding source prior to authorizing the use of elder abuse prevention initiative funds and shall document this in the assessment.

2. Services funded shall reduce or eliminate abuse, neglect, self-neglect, exploitation, or risk of the same.

3. The funds shall be utilized for one-time expenditures but may be used for ongoing or monthly expenditures if no other funding source is available and the client would otherwise remain in an abusive situation.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.6(231) Reallocation of funds. The contractor shall report, in writing, any projected underexpenditure of funds prior to the completion of the contract. The department may reallocate such funds to other contractors for the same purpose or to the department's elder abuse prevention efforts.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.7(231) Eligibility. If funding is available, an older individual shall be eligible for assistance under the elder abuse prevention initiative if all of the following criteria are met:

15.7(1) If abuse, neglect, exploitation, or self-neglect exists, or there is risk of same. Abuse, neglect, exploitation, or self-neglect includes the deprivation of the minimum food, shelter, clothing, supervision, physical care, mental health care, or other care necessary to maintain the older individual in an independent living arrangement.

15.7(2) The older individual is not a resident in a nursing facility as defined in Iowa Code section 135C.1(13). Exceptions may be granted by the department on a case-by-case basis.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.8(231) Assessment intake. A contractor shall accept all referrals for at-risk older individuals who may be experiencing abuse, neglect, self-neglect, or exploitation. The primary purpose of intake is to obtain available and pertinent information regarding an allegation of elder abuse to determine whether or not a referral becomes a case. When a referral is received, the contractor shall record all allegations and concerns on the intake portion of the assessment form to determine the priority level of the case as follows:

15.8(1) Priority 1. The at-risk older individual's health or safety is in immediate danger, and the individual requires immediate intervention. The contractor shall contact appropriate agencies such as the department of human services, emergency medical services, and law enforcement. A face-to-face visit with the at-risk older individual and completion of the assessment form shall occur after the life-threatening situation is resolved and within one business day.

15.8(2) Priority 2. The at-risk older individual's health or safety is not in immediate danger, but the risk is real and foreseeable in the future. A face-to-face visit with the at-risk older individual and completion of the assessment shall be made within four working days.

15.8(3) Priority 3. The at-risk older individual's health or safety is not in immediate danger, but there is potential risk for abuse, neglect, self-neglect, or exploitation. Contact with the at-risk older individual is required within ten working days.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.9(231) Release of information. A release of information form designated by the department shall be signed by the at-risk older individual or the individual's legal representative prior to the provision of services. In Priority 1 cases, if obtaining the at-risk older individual's signature will delay the process of immediate intervention or the protection of the at-risk older individual's safety, telephone approval

is acceptable and shall be documented in the assessment. In this circumstance, appropriate signatures shall be obtained as soon as the life-threatening situation is resolved and a face-to-face assessment is conducted. A release shall also be signed by a client or the client's legal representative if photographs, electronic images, or recordings are taken involving the client or the client's home.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.10(231) Assessment. A comprehensive assessment shall be completed on each client within the time frames specified in 17—15.8(231) to protect the client's safety and provide for services where necessary and desired by the client. The tasks associated with completion of the assessment are:

15.10(1) Interviewing the alleged victim. This shall include interviewing the at-risk older individual to identify the nature and scope of the abuse or risk; assessing the at-risk older individual's cognitive, emotional, and physical capabilities, home environment, relationships with others living in the residence, relationships with any service providers, and information on the alleged offender; and gathering any information related to prior incidences of similar abuse or risk. Interviews with the alleged victim shall occur without the alleged offender present.

15.10(2) Interviewing other sources. Attempts shall be made to conduct interviews with persons who have relevant information to share about allegations.

15.10(3) Evaluating the information. Evaluation of the information shall include an analysis that confirms whether or not the alleged victim meets the eligibility criteria for services.

15.10(4) Intervention plan. An intervention plan designed to address the victim's situation shall be developed for all clients who are found to be eligible for services and, at a minimum, shall include a service plan, desired outcomes, funding source, and dates to review progress. If the situation is perpetuated by an older individual's personal choices, the intervention plan shall note this.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.11(231) Monitoring and reassessment. A contractor shall monitor the provision of services identified in the intervention plan. A contractor shall conduct and document a face-to-face client reassessment every six months or whenever there is a significant change in the client's physical health, mental health, economic status, or risk status and shall update the intervention plan accordingly.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.12(231) Purchase of service. A contractor may subcontract with a service provider for the provision of services. Any service provided by a contractor or a subcontractor shall be documented on a purchase of service form designated by the department. A subcontractor shall send the purchase of service form to the coordinator for approval prior to the expenditure of funds. Notification of approval or denial shall be sent to the subcontractor via E-mail or fax and shall be retained in the client's case record. A service provider shall bill the contractor within 30 days of rendering a service. A copy of all invoices shall be kept in the client's case record.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.13(231) Case records.

15.13(1) A case record shall be maintained for each client and shall contain copies of the assessments and any related correspondence or information that pertains to the assessment of the client, intervention plan, medical records, updates, legal representation documents, and documentation of dates, times, travel, activities, and expenditures related to the client. The department shall have complete access to all client case records during regular business hours and upon request.

15.13(2) Case records shall be maintained for a minimum of five years from the date a case is closed in accordance with Iowa Code chapter 305. A case record that is closed shall contain completed assessments; signed release of information forms; purchase of service forms and invoices for services rendered; department of human services' dependent adult abuse report forms; photographs, electronic images, or recordings; and all case documentation, records, and notes.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.14(231) Refusal of assistance. A client has the right to refuse services at any time. However, if dependent adult abuse is suspected, the abuse shall be reported to law enforcement, the department of human services, and the county attorney pursuant to mandatory reporting requirements.
[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.15(231) Termination or limitation. A contractor may terminate or limit the provision of services under circumstances including but not limited to the following:

1. Services are no longer needed or do not benefit the client;
2. The client moves out of state or outside the service area;
3. The client moves into a nursing facility as defined in Iowa Code section 135C.1(13);
4. The client or the client's legal representative requests termination of services;
5. The client is unwilling or unable to meet the terms in the intervention plan;
6. The client's legal representative refuses to provide information needed for the development of an intervention plan; or
7. There is risk of harm to the contractor or service provider.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.16(231) Confidentiality and disclosure. Client identification numbers shall be used to maintain confidentiality. All case records shall be maintained by the department and the contractor as confidential records pursuant to Iowa Code section 22.7 and shall not be disclosed except with the written consent of the client or the client's legal representative.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.17(231) Legal representatives.

15.17(1) A legal representative shall provide appointment papers, a court order, or power of attorney documentation within 72 hours of being contacted by a contractor. The legal representative's signature shall be obtained on the assessment before the client receives services.

15.17(2) If there is suspicion of abuse, neglect, exploitation or self-neglect of an older individual and the legal representative will not permit access to the older individual, the contractor shall make oral and written reports to the department of human services and local law enforcement pursuant to Iowa Code section 235B.3. The contractor shall also notify the judge in probate for the county in which the guardianship or conservatorship was filed by certified letter within five days of the denial of access. The notification shall detail concerns and potential consequences of the guardian's or conservator's action or inaction that appears not to be in the best interest of the older individual.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.18(231) Appeals. Complaints by any aggrieved party shall be heard first by the contractor using the contractor's procedures and shall be exhausted before the department is contacted. Appeals made by any aggrieved party to the department shall follow the procedures set forth in 17—2.9(231).

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.19(231) Conflict of interest. Conflict of interest includes any action or failure to act that may be an actual or perceived conflict between official duties and personal interest. Conflict of interest exists when an elder abuse prevention initiative contractor or any entity or individual involved in that program:

1. Uses an official position for private gain (other than salary);
2. Gives preferential treatment to any contractor, entity, or individual or fails to act impartially in the conduct of official duties;
3. Impedes or adversely affects governmental efficiency or economy;
4. Engages in conduct that could adversely affect the confidence of the public in the integrity of the elder abuse prevention initiative;
5. Creates circumstances where it might reasonably be perceived that a contractor's, an entity's, or an individual's judgment could be influenced by the nature of the circumstances; or

6. Has a client that is related to the contractor, entity, or individual within the third degree of consanguinity.

[ARC 8553B, IAB 2/24/10, effective 3/31/10]

17—15.20(231) Severability. Should any rule, subrule, paragraph, phrase, sentence, or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8553B, IAB 2/24/10, effective 3/31/10; ARC 3140C, IAB 6/21/17, effective 7/26/17]

These rules are intended to implement Iowa Code sections 231.56A and 235B.16 and chapter 249H and Title VII of the federal Older Americans Act.

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

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

[Filed ARC 8553B (Notice ARC 8427B, IAB 12/30/09), IAB 2/24/10, effective 3/31/10]

[Filed ARC 3140C (Notice ARC 2968C, IAB 3/15/17), IAB 6/21/17, effective 7/26/17]

CHAPTER 16
SENIOR LIVING COORDINATING UNIT
Rescinded IAB 12/30/09, effective 12/4/09

CHAPTER 17
PETITION FOR RULE MAKING

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 17]

Insert the petition for rule making segment of the Uniform Rules on Agency Procedure which is printed in the first volume of Iowa Administrative Code, with the following amendments:

17—17.1(17A) Petition for rule making. In lieu of the words “designate office”, insert “the Director, Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025”.

In lieu of the words “AGENCY NAME”, the heading on the petition should read:

BEFORE THE DEPARTMENT ON AGING

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

17—17.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director, Iowa Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

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

These rules are intended to implement Iowa Code section 17A.7.

[Filed 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

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

[Filed 3/26/04, Notice 2/4/04—published 4/14/04, effective 5/19/04]

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

¹ Effective date of Chapter 17 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 18
DECLARATORY ORDERS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 18]

17—18.1(17A) Petition for declaratory order. Any person may file a petition with the department on aging for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department on aging at the Iowa Department on Aging, Attn: Director, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. A petition is deemed filed when it is received by that office. The department on aging shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT ON AGING	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}
	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 17—18.7(17A).
9. The petitioner’s state identification number, if applicable.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

Application requests for an informal review of department policy, law or rules in relation to specific facts shall be in writing and may be submitted electronically or by mail. The request must recite all pertinent facts and questions. The department response to a request for informal review shall not be considered a declaratory order as specified in Iowa Code chapter 17A. The department may, at its discretion, choose to issue a declaratory order in response to a request for informal review.

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

17—18.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department on aging shall give notice of the petition to all persons not served by the petitioner pursuant to 17—18.6(17A) to whom notice is required by any provision of law. The department on aging may also give notice to any other persons.

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

17—18.3(17A) Intervention.

18.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for notice under 17—18.2(17A) and before 30-day time for department action under 17—18.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

18.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department on aging.

18.3(3) A petition for intervention shall be filed at the department on aging. Such a petition is deemed filed when it is received by that office. The department on aging will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT ON AGING

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.
 [ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department on aging may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.
 [ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025.
 [ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.6(17A) Service and filing of petitions and other papers.

18.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

18.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department on

Aging, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department on aging.

18.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by rule 17—13.12(17A).
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.7(17A) Consideration. Upon request by petitioner, the department on aging must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department on aging, a member of the department on aging, or a member of the staff of the department on aging, to discuss the questions raised. The department on aging may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department on aging by any person.

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

17—18.8(17A) Action on petition.

18.8(1) Within the time allowed by Iowa Code section 17A.9(3) after receipt of a petition for a declaratory order, the department on aging or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

18.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 17—13.2(17A).

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

17—18.9(17A) Refusal to issue order.

18.9(1) The department on aging shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department on aging to issue an order.
3. The department on aging does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department on aging to determine whether a statute is unconstitutional on its face.

18.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

18.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

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

17—18.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—18.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department on aging, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department on aging. The issuance of a declaratory order constitutes final department action on the petition.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 17 and 231.

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

¹ Effective date of Chapter 18 delayed 70 days by the Administrative Rules Review Committee.

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. 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 17—19.1(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 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.	

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
• Elder Abuse	O	NA	No	NA
• Retired Iowan	O	NA	No	NA
Employment	O	NA	No	NA
• 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	O	NA	No	NA
• 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
			name address county PSA phone no. training info.	
Older Iowan Legislature	O	NA	Yes	Iowa Code 231.23
			name address PSA district phone no.	
State Advisory Council	O	NA	Yes	Iowa Code 231.23
			name address phone no. PSA	
Ombudsman Complaints	C	Iowa Code 135C.37, 231.42	Yes	Iowa Code 135C.37 231.42
			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	
Newsletter Mailing Lists, Conference Lists, Interested Individuals and Group Lists, Resource Lists	O	NA	Yes	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

19.14(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.

19.14(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]

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]

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

CHAPTER 20
OLDER IOWANS LEGISLATURE
Rescinded IAB 12/22/04, effective 1/26/05

CHAPTER 21
THE SERVICE OF CASE MANAGEMENT
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 21]

17—21.1(231) Authority. This chapter implements the service of case management as provided in Iowa Code section 231.23A and the federal Older Americans Act (OAA).
[ARC 2976C, IAB 3/15/17, effective 5/3/17]

17—21.2(231) Purpose. This chapter sets out client eligibility, covered services, program administration and program standards to assist clients in coordinating the use of the long-term living continuum which ranges from the independent access of congregate services to the delivery of support services in the home or through facility-based care for the clients served. The service of case management is designed to promote and support independent living of older Iowans funded through Title III (Grants to State and Community Programs on Aging) of the OAA or state funds distributed to the area agencies on aging (AAA) based upon their current area plan.
[ARC 2976C, IAB 3/15/17, effective 5/3/17]

17—21.3(231) General requirements for providers of case management services.

21.3(1) *Qualifications to provide the service of case management.* An individual providing the service of case management shall have, at a minimum, one of the following qualifications:

a. A bachelor's degree in the human services field including, but not limited to, social work, sociology, special education, rehabilitation counseling, and psychology.

b. An associate's degree and two years of full-time equivalent work experience in a human services field involving direct contact with service to people in overcoming social, economic, psychological or health problems.

c. A license as a registered nurse in Iowa.

21.3(2) *Continuing education requirements for the provider of the service of case management.* An individual providing the service of case management shall:

a. Attend during the term of employment annual and other case management training as required by the department.

b. Obtain eight hours of relevant training annually. If eight hours of training are not provided in accordance with paragraph 21.3(2) "a," the individual shall document training related to the provision of geriatric case management. Documentation shall be included in the individual's personnel record.

c. Complete the mandatory reporter requirements within 90 business days of hiring in accordance with Iowa Code chapter 235B. Each AAA shall ensure that all providers of the service of case management meet this requirement.

21.3(3) *Background checks.* Each AAA shall ensure and document that, prior to beginning employment, every potential provider of the service of case management shall have successfully completed a criminal history background check and child and dependent adult abuse record check.

a. A background check includes, at a minimum, a request that the Iowa department of public safety perform a criminal history background check and that the department of human services perform child and dependent adult abuse record checks of every potential provider.

b. If a potential provider has an unfavorable criminal history background check or child and dependent adult abuse record check, the potential provider shall not provide services under this chapter.

21.3(4) *Contracting for case management services.* An AAA may contract for the provision of the service of case management.

a. The contractor and the individual providing the service of case management shall be subject to and comply with any applicable state or federal laws and regulations, including this chapter.

b. For monitoring purposes, the department shall have access to all records related to the service of case management and all related facilities of the contractor.

c. The AAA shall monitor the contractor in accordance with rule 17—6.10(231).

[ARC 2976C, IAB 3/15/17, effective 5/3/17]

17—21.4(231) Case management service activities. Case management service activities include the following components.

21.4(1) Client identification. The provider of the service of case management may identify clients through public education, awareness, and outreach.

21.4(2) Intake. The provider of the service of case management shall follow a defined intake process developed or approved by the department. To become eligible for the service of case management, a potential client with case management needs shall:

- a. Be a legal resident of the state of Iowa;
- b. Be aged 60 or older;
- c. Be in need of the service of case management based on a needs assessment as described in subrule 21.4(3);
- d. Be funded through Title III (Grants to State and Community Programs on Aging) of the OAA or state funds distributed to the AAA based upon their current area plan; and
- e. Not be entitled to receive case management services or case management service reimbursement from another source.

21.4(3) Needs assessment. A face-to-face comprehensive assessment, utilizing a standardized tool developed or approved by the department and preferably conducted in the client's home or place of residence, must be conducted for each case management client to identify the conditions and needs of the client and to establish goals for services provided.

21.4(4) Service plan development. Based on a standardized form developed or approved by the department, a written service plan shall be prepared for each client. The service plan shall utilize appropriate and available resources.

- a. The service plan shall be developed within 20 calendar days of the needs assessment.
- b. The service plan shall identify available services and problem-solving efforts to meet the client's determined needs and to enable the client to live with maximum possible independence.
- c. A copy of the service plan shall be given to the client or the client's legal representative and shall be documented in the client's file.

21.4(5) Service plan implementation. A referral of the client to an appropriate resource for service provision and problem resolution shall be made and documented in the client's file. If the referral is made to an informal network (e.g., family, friends), the service and problem-solving arrangement agreed to regarding duties and responsibilities shall be documented in the client's service plan. The following services shall be performed for each client, as appropriate and needed:

- a. Active intervention and advocacy on behalf of the client to access necessary services from community organizations and to resolve problems experienced by the client;
- b. Establishment of connections with service providers for the prompt and effective delivery of services needed by the client, including submission of instructions for service delivery to the appropriate service providers;
- c. Encouragement of informal care given by individuals, family, friends, neighbors, and community organizations, so that publicly supported services supplement rather than supplant the roles and responsibilities of these natural support systems.

21.4(6) Follow-up and reassessment of client status.

a. *Follow-up.* Monthly monitoring of each client shall be conducted through telephone or face-to-face contact to ensure prompt and effective service delivery and response to changes in the client's needs and status. All follow-up shall be documented in the client's file.

b. *Reassessment.* A face-to-face needs assessment of the client's condition and needs must be conducted in accordance with subrule 21.4(3), preferably in the home of the client, no later than the twelfth month from the last completed needs assessment. This needs assessment must be conducted more frequently if a change in the client's circumstances is identified in a follow-up or a report from a third party.

21.4(7) Client discharge.

a. A client shall be discharged from the service of case management when any one of the following situations has occurred:

- (1) The client dies;
- (2) The client moves out of state;
- (3) The client moves into a nursing facility and the stay is expected to be permanent;
- (4) The client or the client's legal representative requests termination of case management service;
- (5) The client is unwilling or unable to adhere to the agreed-upon service plan;
- (6) The client or the client's legal representative refuses to provide access to information necessary for the development or implementation of the service plan;
- (7) The service provider determines that the client's needs cannot be met in a way that ensures the client's health, safety and welfare;
- (8) The service provider determines that the client's goals are achieved and the client no longer requires the service of case management;
- (9) The client becomes eligible for a comparable case management service from another funding source; or
- (10) The AAA determines that funding is no longer available to provide the service of case management.

b. A point of contact identified by the AAA shall be notified of and approve all discharges prior to initiation of discharge action.

c. If the discharge is due to the circumstances given in subparagraphs 21.4(7)“a”(5) to 21.4(7)“a”(9), the AAA providing the service of case management shall provide a 30-day written notice to the client or the client's legal representative stating the reasons for the discharge from case management and include the process for appealing the decision in accordance with rule 17—6.10(231).

21.4(8) Transfer. When a client moves from the AAA's geographic service area, the AAA shall, with the documented consent of the client or the client's legal representative, refer the client to the AAA serving the area to which the client has moved.

21.4(9) Monitoring and follow-up. The AAA shall, and the department may, monitor and follow up with providers of the service of case management.

a. Monitoring shall be conducted to determine whether:

- (1) Services are being furnished in accordance with the client's service plan, including the amount of service provided, the client's attendance, and the client's participation in the service.
- (2) The client has declined services in the service plan.
- (3) Communication is occurring among all providers to ensure coordination of services.
- (4) Services in the service plan are meeting the identified needs of the client, including the client's progress toward achieving the goals and actions determined in the service plan.

b. Monitoring shall include accessing and assessing the client, the places of service (including the client's home when applicable), and all services.

21.4(10) Records and documentation.

a. A case management service provider shall maintain individual client records in a paper file or in a case management software database approved by the department. The case file for each client shall minimally include the following information:

- (1) Intake form(s);
- (2) Comprehensive needs assessment;
- (3) Copies of release of information (if needed);
- (4) Service plan;
- (5) Record of referral(s) and request(s);
- (6) Correspondence related to the case;
- (7) Formal case notes, which include documentation of the follow-up as noted in paragraph 21.4(6)“a” or of case closure.

b. Except by written consent of the client or the client's legal representative, the use or disclosure by any person of any information concerning a client for any purpose not directly connected with the administration of the responsibilities of the department, AAA or contractor is prohibited.

c. Upon change in AAA designation, the AAA which has been dedesignated shall transfer all specified records as prescribed by the department to the newly designated AAA.

These rules are intended to implement Iowa Code section 231.23A.

[ARC 2976C, IAB 3/15/17, effective 5/3/17]

[Filed 5/5/06, Notice 1/4/06—published 5/24/06, effective 7/1/06]

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[Filed ARC 2976C (Notice ARC 2851C, IAB 12/7/16), IAB 3/15/17, effective 5/3/17]

CHAPTER 22
OFFICE OF PUBLIC GUARDIAN
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 22]

17—22.1(231E,633) Purpose. This chapter implements the office of public guardian as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as public guardians. It also establishes the qualifications of consumers eligible for services.
[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.2(231E,633) Definitions. Words and phrases used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“*Assessment*” means a comprehensive, in-depth evaluation to identify an individual’s current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.

“*Case opening*” means the internal administrative process used by the local office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer’s estate; opening bank or other financial accounts on the consumer’s behalf; assigning staff to perform public guardianship responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer’s estate; and any other activities related to preparing for and assuming the responsibilities as a public guardian.

“*Consumer*” as used in this chapter means any individual receiving public guardianship services.

“*Court*” means the probate court having jurisdiction over the consumer.

“*Department*” means the department on aging established in Iowa Code section 231.21.

“*Estate*” means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.

“*Fee*” or “*fees*” means any costs assessed by the state office against a consumer for public guardianship services, including monthly fees or a one-time case-opening fee for establishment of a case.

“*Financial hardship*” means a living consumer who has a total value in liquid assets below \$6,500; or the consumer’s estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer’s dependents.

“*Inventory*” means a detailed list of the estate.

“*Liquid assets*” means the portion of a consumer’s estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.

“*Local office*” means a local office of public guardian.

“*Local public guardian*” means an individual under contract with the department to act as a guardian, conservator, or representative payee.

“*Net proceeds*” means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.

“*Program*” means the services offered by the office of public guardian.

“*Public guardian*” means the state public guardian or a local public guardian.

“*Record*” means any information obtained by the state or local office in the performance of its duties.

“*State office*” means the state office of public guardian.

“*State public guardian*” means the administrator of the state office of public guardian.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.3(231E,633) Public guardian qualifications. All public guardians shall have graduated from an accredited four-year college or university and shall be certified by the Center for Guardianship Certification within 12 months of assuming duties as a public guardian. This certification shall be kept current while the person is serving as a public guardian.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.4(231E,633) Ethics and standards of practice. The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by public guardians when serving as a public guardian. Subsequent to appointment to serve a consumer, the public guardian shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.5(231E,633) Staffing ratio. Local offices shall be responsible for no more than 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached by a local office.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases a local office would have significant difficulty meeting the needs of consumers, the state office may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services.

22.5(2) In the state office's sole discretion, a local office may exceed staffing ratios under the following circumstances:

- a. A priority situation exists as defined in subrule 22.7(2), and
- b. Acceptance of case(s) will not adversely affect services to current consumers.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 3484C, IAB 12/6/17, effective 1/10/18; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.6(231E,633) Conflict of interest. A conflict of interest arises when the public guardian has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the consumer. When assigning a consumer to a public guardian, all reasonable efforts shall be made to avoid a conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned public guardian shall not:

- a. Provide direct services to the consumer receiving public guardianship services;
- b. Have an affiliation with or financial interest in the consumer's estate;
- c. Employ friends or family to provide services to the consumer for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The public guardian shall be independent from all service providers, thus ensuring that the public guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the consumer.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.7(231E,633) Individuals eligible for services. The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

22.7(1) In order to qualify for services, the individual shall meet all of the following criteria:

- a. Is a resident of the state of Iowa;
- b. Is aged 18 or older;
- c. Does not have a suitable individual or appropriate entity willing and able to serve as guardian or conservator;

- d. Is incompetent; and
- e. Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.

22.7(2) The following cases shall be given priority:

- a. Those involving abuse, neglect or exploitation;
- b. Those in which a critical medical decision must be made; or
- c. Any situation which may cause serious or irreparable harm to the consumer's mental or physical health or estate.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.8(231E,633) Application and intake process—guardianship, conservatorship, and representative payee.

22.8(1) Any person may submit an application for services on behalf of an individual believed to be in need of public guardianship services. Applications are available through the state office. Completed applications shall be submitted to the Office of Public Guardian, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or local office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the individual on whose behalf the application is submitted.

22.8(2) The state office shall make a determination regarding eligibility of the individual and acceptance or denial of the case based on a review of the completed application.

22.8(3) The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

22.8(4) Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.9(231E,633) Case records.

22.9(1) A case record must be established for each consumer. At a minimum, the case record must contain:

- a. Copies of the assessments, medical records, and updates, if any;
- b. A separate financial management folder containing an inventory, an individual financial management plan, a record of all financial transactions made on behalf of the consumer by the public guardian, copies of receipts for all expenditures made by the public guardian on behalf of the consumer, and copies of all other documents pertaining to the consumer's financial situation as required by the state office;
- c. Itemized statements of costs incurred in the provision of services for which the public guardian received court-authorized reimbursement directly from the consumer's estate; and
- d. Other information as required by the state office.

22.9(2) All case records maintained by the public guardian shall be confidential as provided in Iowa Code section 231E.4(6) "g."

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.10(231E,633) Confidentiality. Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by public guardians in the course of their duties.

22.10(1) Records or information obtained for use by a public guardian is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state and local offices with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.

22.10(2) In its sole discretion, the state or local office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.

22.10(3) Information may be redacted so that personally identifiable information is kept confidential.

22.10(4) Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.

22.10(5) Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.

22.10(6) The state office or a local office may enter into contracts or agreements with public or private entities in order to carry out the state or local office's official duties. Information necessary to carry out these duties may be shared with these entities. The state or local office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected health information on the state or local office's behalf if the state or local office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.10(7) Release for judicial and administrative proceedings.

a. Information shall be released to the court as required by law.

b. The state or local office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state or local office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.

c. If a court subpoenas other information that the state or local office is prohibited from releasing, the state or local office 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.

22.10(8) Information concerning suspected fraud or misrepresentation in order to obtain public guardianship services or assistance may be disclosed to law enforcement authorities.

22.10(9) Information concerning consumers may be shared with service providers under contract.

a. Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state or local office.

b. When the information needed by the service provider is mental health information or substance abuse information, the consumer's specific consent is required.

22.10(10) After the state or local office receives a request for access to a confidential record, and before the state or local office releases such a record, the state or local office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or 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 a 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.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.11(231E,633) Termination or limitation. Either a local office or the state office may seek the termination or limitation of a local office's duties under circumstances including but not limited to the following:

1. Public guardianship services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid guardianship or conservatorship service provider;
3. A conflict of interest or the appearance of a conflict of interest arises;

4. The state or local office lacks adequate staff or financial resources;
5. The consumer moves outside the state or outside the local office's service area;
6. The state office is no longer the last resort for assistance;
7. The local office withdraws from the service agreement;
8. Termination of the program by law; or
9. Other circumstances which indicate a need for termination or limitation.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.12(231E,633) Service fees.

22.12(1) The state public guardian and local public guardian shall be entitled to reasonable compensation for their public guardianship services as determined by using the following criteria:

- a. Such compensation shall not exceed actual costs.
- b. Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.
- c. Fees shall be as established in rule 17—22.13(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.12(2) Fees shall not be assessed on income or support derived from Medicaid. Income or support derived from Social Security and other federal benefits shall be subject to assessment unless the funds have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

22.12(3) Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at \$6,500 or more on the date of the public guardian's appointment shall be assessed a one-time case-opening fee for establishment of the case by the local office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as public guardian for the same consumer which involves similar powers and duties.

22.12(4) Monthly fees.

a. A monthly fee for public guardianship services other than the sale or management of real or personal property shall be assessed against all consumers with liquid assets valued at \$6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when a public guardian is appointed to guardianship, conservatorship, or representative payee duties.

b. In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

22.12(5) Additional fees.

a. Fees for the sale of a consumer's real or personal property shall be in addition to case-opening and monthly service fees.

b. Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

c. Such further allowances as are just and reasonable may be made by the court to public guardians for actual, necessary and extraordinary expenses and services.

22.12(6) Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer's state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

22.12(7) Settlement of a personal injury cause of action. Fees for the settlement of a consumer's personal injury cause of action may be collected upon court approval of the settlement.

22.12(8) Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer's estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

22.12(9) Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

22.12(10) Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.13(231E,633) Fee schedule. The following fees are applicable to services provided by a public guardian unless reduced or waived pursuant to paragraph 22.12(1)“b.”

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Monthly public guardianship services except representative payee.	
Total value of liquid assets:	
\$6,500 – \$9,999	\$100
\$10,000 – \$19,999	\$125
\$20,000 – \$29,999	\$150
\$30,000 – \$39,999	\$175
\$40,000 – \$49,999	\$200
\$50,000 – \$59,999	\$225
\$60,000 – \$69,999	\$250
\$70,000 – \$79,999	\$275
\$80,000 – \$89,999	\$300
\$90,000 – \$99,999	\$325
\$100,000 or above	\$350
Preparation and filing of income tax returns:	
Each federal return	\$50
Each state return	\$25
Settlement of a personal injury cause of action:	
Each cause of action approved by the probate court	\$250
Establishment of a recognized trust for the consumer’s financial estate:	
Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.14(231E,633) Denial of services—appeal. An appeal from a consumer regarding denial of services shall be made pursuant to 17—Chapter 13.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.15(231E,633) Contesting the actions of a guardian or conservator.

22.15(1) Consumers who wish to contest the actions of a guardian or conservator may express their concerns to the state office in writing or verbally.

22.15(2) Within two working days of receipt of the concern, the state office shall notify the consumer of its decision to uphold or change the course of action taken by the guardian or conservator. The state office shall notify the consumer both verbally and in writing.

22.15(3) The state office shall explain to the consumer, in a manner that the consumer fully understands, that the consumer has the right to counsel and the right to appeal the state office’s decision pursuant to 17—Chapter 13.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

17—22.16(231E,633) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

[ARC 8489B, IAB 1/27/10, effective 1/7/10; ARC 4880C, IAB 1/15/20, effective 2/19/20]

These rules are intended to implement Iowa Code chapters 231E and 633.

[Filed 12/4/08, Notice 9/10/08—published 12/31/08, effective 2/4/09]

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

[Filed ARC 3484C (Notice ARC 3324C, IAB 9/27/17), IAB 12/6/17, effective 1/10/18]

[Filed ARC 4880C (Notice ARC 4550C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

CHAPTER 23
AGING AND DISABILITY RESOURCE CENTER

17—23.1(231) Authority. The department has been given authority to administer aging and disability resource centers (ADRCs) by Iowa Code section 231.64.

[ARC 0624C, IAB 3/6/13, effective 4/10/13; ARC 4881C, IAB 1/15/20, effective 2/19/20]

17—23.2(231) Aging and disability resource centers. The department shall administer aging and disability resource centers and shall do all of the following:

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

[ARC 0624C, IAB 3/6/13, effective 4/10/13; ARC 4881C, IAB 1/15/20, effective 2/19/20]

17—23.3(231) ADRC. An ADRC designated by the department shall perform all duties mandated by federal and state law and applicable rules and regulations. Services provided under this chapter shall be included in the Area Agencies on Aging Area Plan in accordance with 17—Chapter 6 and as described in the Area Agencies on Aging Reporting Manual.

[ARC 0624C, IAB 3/6/13, effective 4/10/13; ARC 4881C, IAB 1/15/20, effective 2/19/20]

17—23.4(231) Population served. An aging and disability resource center shall assist individuals in accordance with Iowa Code section 231.64(2).

[ARC 0624C, IAB 3/6/13, effective 4/10/13; ARC 4881C, IAB 1/15/20, effective 2/19/20]

17—23.5(231) Options counselors. An ADRC shall ensure that options counselors meet the requirements of this chapter and applicable federal and state law.

23.5(1) Background checks. All ADRCs shall establish and maintain background check policies and procedures that include, but are not limited to, the following:

- a. A requirement that, prior to beginning employment, all options counselors, whether full-time, part-time, or unpaid, shall undergo criminal and abuse background checks.
- b. A background check includes, at a minimum, a request that the department of public safety perform a criminal history check and the department of human services perform child and dependent adult abuse record checks of the applicant in this state.
- c. Protocol for how to proceed in the event that an options counselor applicant is found to have a criminal history or history of child or dependent adult abuse.

23.5(2) Mandatory reporters. All options counselors shall be considered mandatory reporters pursuant to Iowa Code chapter 235B and shall adhere to federal and state law and applicable rules and regulations for mandatory reporters.

23.5(3) Options counselor duties. An options counselor shall provide options counseling that is person-directed and interactive and that allows the consumer to make informed choices about long-term living services and community supports based upon the consumer's preferences, strengths and values.

23.5(4) Options counselor minimum qualifications. An options counselor shall possess the following minimum qualifications:

- a. Bachelor's degree in a human services field; or
- b. License to practice as a registered nurse; or
- c. Bachelor's degree and two years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning; or
- d. Associate's degree and four years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning; or
- e. License to practice as a licensed practical nurse and four years of experience working in the areas of aging, disabilities, community health, or hospital discharge planning.

23.5(5) *Position-specific training.* The options counselor shall provide to the ADRC documentation of successful completion of the person-centered counseling core curriculum provided by Elsevier, or an equivalent that is approved by the department, within 30 days of employment as an options counselor. Documentation shall be included in the individual's personnel record.

23.5(6) *Continuing education requirements for an options counselor.* An options counselor shall:

a. Obtain during the term of employment eight hours of relevant training annually as required by the department.

b. Document training related to the provision of options counseling if eight hours of training are not obtained in accordance with paragraph 23.7(6)“*a.*” Documentation shall be included in the individual's personnel record.

[ARC 1537C, IAB 7/9/14, effective 8/13/14; ARC 3485C, IAB 12/6/17, effective 1/10/18; ARC 4881C, IAB 1/15/20, effective 2/19/20]

These rules are intended to implement Iowa Code section 231.64.

[Filed ARC 0624C (Notice ARC 0507C, IAB 12/12/12), IAB 3/6/13, effective 4/10/13]

[Filed ARC 1537C (Notice ARC 1423C, IAB 4/16/14), IAB 7/9/14, effective 8/13/14]

[Filed ARC 3485C (Notice ARC 3376C, IAB 10/11/17), IAB 12/6/17, effective 1/10/18]

[Filed ARC 4881C (Notice ARC 4548C, IAB 7/17/19), IAB 1/15/20, effective 2/19/20]

CHAPTER 24
ADULT DAY SERVICES PROGRAMS
Rescinded IAB 12/30/09, effective 1/1/10

CHAPTER 24
ADULT DAY SERVICES PROGRAMS
Rescinded IAB 12/30/09, effective 1/1/10

CHAPTER 25
ASSISTED LIVING PROGRAMS
[Prior to 4/14/04, see 321—Ch 27]
Rescinded IAB 12/30/09, effective 1/1/10

CHAPTER 26
MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION
FOR ELDER GROUP HOMES, ADULT DAY SERVICES AND
ASSISTED LIVING PROGRAMS
Rescinded IAB 12/30/09, effective 1/1/10

CHAPTER 27
FEES FOR ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS
Rescinded IAB 12/30/09, effective 1/1/10

CHAPTER 28
IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED
SERVICES FOR SENIORS
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 28]
Rescinded **ARC 0625C**, IAB 3/6/13, effective 4/10/13

CHAPTER 29
REDUCTION OF AREA AGENCIES ON AGING
Rescinded **ARC 2977C**, IAB 3/15/17, effective 5/3/17