

AGING, DEPARTMENT ON[17]

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CHAPTER 1

INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

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

CHAPTER 2

DEPARTMENT ON AGING

- 2.1(231) Mission statement
- 2.2(231) Definitions
- 2.3(231) Department established
- 2.4(231) Director
- 2.5(231) Organizational units of the department
- 2.6(231) Staffing
- 2.7(231) Discrimination
- 2.8(231) Affirmative action plans
- 2.9(231) Department complaint and appeal procedures
- 2.10(231) Severability

CHAPTER 3

COMMISSION ON AGING

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

CHAPTER 4

DEPARTMENT PLANNING RESPONSIBILITIES

- 4.1(231) Definitions
- 4.2(231) State plan on aging
- 4.3(231) Designation of PSA
- 4.4(231) Designation of AAA
- 4.5(231) Types of entities that qualify as an AAA
- 4.6(231) Multipurpose entity
- 4.7(231) Request for waiver
- 4.8(231) Applicant qualification and preference
- 4.9(231) Procedure for designation of an AAA
- 4.10(231) Withdrawal of AAA designation
- 4.11(231) Procedures for withdrawal of AAA designation
- 4.12(231) Department action subsequent to withdrawal
- 4.13(231) Technical assistance
- 4.14(231) Severability

CHAPTER 5
DEPARTMENT FISCAL POLICY

- 5.1(231) Definitions
- 5.2(231) Grants to area agencies on aging
- 5.3(231) Limitations on use
- 5.4(231) Expenditures in rural areas
- 5.5(231) Funding formulas
- 5.6(231) State appropriations and case management allotments
- 5.7(231) Program allotment calculations
- 5.8(231) Funding estimates
- 5.9(231) Matching funds
- 5.10(231) Allowable use of federal and state funds for multiyear area plan administration
- 5.11(231) Reallotment
- 5.12(231) Restriction on delegation of authority to other agencies
- 5.13(231) Records and reports
- 5.14(231) State reviews and audits
- 5.15(231) Acquisition of goods and services
- 5.16(231) Restrictions for multipurpose agencies designated as AAA
- 5.17(231) Records—contract administration
- 5.18(231) Recapture of funds for facilities
- 5.19(231) Property management

CHAPTER 6
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

- 6.1(231) Definitions
- 6.2(231) Area plan
- 6.3(231) Area agency administration
- 6.4(231) Confidentiality and disclosure of AAA information
- 6.5(231) AAA contact information
- 6.6(231) Duties of AAA
- 6.7(231) AAA board of directors
- 6.8(231) AAA advisory council
- 6.9(231) Emergency situations
- 6.10(231) AAA procedures manual
- 6.11(231) Contracts and subgrants
- 6.12(231) Direct service
- 6.13(231) Noncompliance
- 6.14(231) Priority service expenditures
- 6.15(231) Waivers of priority service expenditures
- 6.16(231) Requirements for service providers
- 6.17(231) Entrepreneurial activities of AAA
- 6.18(231) Severability

CHAPTER 7
AREA AGENCY ON AGING SERVICE DELIVERY

- 7.1(231) Definitions
- 7.2(231) Service delivery
- 7.3(231) Outreach for greatest need
- 7.4(231) Delivery of service
- 7.5(231) Funding for services and program facilities
- 7.6(231) Compliance with health, safety and construction requirements
- 7.7(231) Term of use of an acquired or constructed facility

7.8(231)	Restrictions
7.9(231)	Information and assistance services
7.10(231)	Legal assistance requirements
7.11(231)	Disease prevention and health promotion under Title III-D of the Act
7.12(231)	Nutrition services
7.13(231)	AOA NSIP programs
7.14(231)	Nutrition performance standards
7.15(231)	Food standards
7.16(231)	Food-borne illness
7.17(231)	Menus
7.18(231)	Special dietary needs
7.19(231)	Congregate nutrition services
7.20(231)	Eligibility for meals at congregate nutrition sites
7.21(231)	Home-delivered meals
7.22(231)	Noncompliance
7.23(231)	Requirements for opening or closing congregate nutrition sites
7.24(231)	Evaluation of sites

CHAPTER 8

LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

8.1(231)	Definitions
8.2(231)	Purpose
8.3(231)	Long-term care resident's advocate/ombudsman duties
8.4(231)	Access requirements
8.5(231)	Authority and responsibilities of the department
8.6(231)	Volunteer long-term care ombudsman program

CHAPTER 9

RESIDENT ADVOCATE COMMITTEES

9.1(231)	Definitions
9.2(231)	Resident advocate committees established
9.3(231)	Application for committee membership
9.4(231)	Appointment to resident advocate committees
9.5(231)	Objection to and termination of appointments to resident advocate committees
9.6(231)	Request for reconsideration of appointment or termination of appointment
9.7(231)	Resident advocate committee structure and procedures
9.8(231)	Duties of the committee
9.9(231)	Committee access and assistance
9.10(231)	Confidentiality
9.11(231)	Committee response to complaints and grievances
9.12(231)	Complaints referred from the department of inspections and appeals
9.13(231)	Accountability measures
9.14(231)	Reporting statistics
9.15(231)	Severability

CHAPTER 10

SENIOR INTERNSHIP PROGRAM (SIP)

10.1(231)	Scope and purpose
10.2(231)	Definitions
10.3(231)	Eligibility for service
10.4(231)	Funding
10.5(231)	Program requirements
10.6(231)	Funding criteria

- 10.7(231) Monitoring and record keeping
- 10.8(231) Severability

CHAPTER 11

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

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

CHAPTER 12

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

- 12.1(231) Authority
- 12.2(231) Purpose
- 12.3(231) Elder Abuse, neglect, or exploitation prevention and public awareness
- 12.4(231,235B) Dependent adult abuse mandatory reporter training

CHAPTER 13

RULES AND PRACTICES IN CONTESTED CASES

- 13.1(17A) Scope and applicability
- 13.2(17A) Definitions
- 13.3(17A) Time requirements
- 13.4(17A) Requests for contested case proceeding
- 13.5(17A) Notice of hearing
- 13.6(17A) Presiding officer
- 13.7(17A) Waiver of procedures
- 13.8(17A) Telephone proceedings
- 13.9(17A) Disqualification
- 13.10(17A) Consolidation—severance
- 13.11(17A) Pleadings
- 13.12(17A) Service and filing of pleadings and other papers
- 13.13(17A) Discovery
- 13.14(17A) Subpoenas
- 13.15(17A) Motions
- 13.16(17A) Prehearing conference
- 13.17(17A) Continuances
- 13.18(17A) Withdrawals
- 13.19(17A) Intervention
- 13.20(17A) Hearing procedures

13.21(17A)	Evidence
13.22(17A)	Default
13.23(17A)	Ex parte communication
13.24(17A)	Recording costs
13.25(17A)	Interlocutory appeals
13.26(17A)	Final decision
13.27(17A)	Appeals and review
13.28(17A)	Applications for rehearing
13.29(17A)	Stays of department actions
13.30(17A)	No factual dispute contested cases
13.31(17A)	Emergency adjudicative proceedings
13.32(17A)	Informal settlement

CHAPTER 14

IOWA FAMILY CAREGIVER SUPPORT PROGRAM

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

CHAPTER 15

ELDER ABUSE INITIATIVE, EMERGENCY SHELTER AND SUPPORT SERVICES PROJECTS

15.1(231)	Authority
15.2(231)	Purpose
15.3(231)	Definitions
15.4(231,249H)	Funding
15.5(231)	Eligibility
15.6(231)	Application process
15.7(231)	Reporting and monitoring

CHAPTER 16

Reserved

CHAPTER 17

PETITION FOR RULE MAKING (Uniform Rules)

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

CHAPTER 18

DECLARATORY ORDERS

18.1(17A)	Petition for declaratory order
18.2(17A)	Notice of petition
18.3(17A)	Intervention
18.4(17A)	Briefs

18.5(17A)	Inquiries
18.6(17A)	Service and filing of petitions and other papers
18.7(17A)	Consideration
18.8(17A)	Action on petition
18.9(17A)	Refusal to issue order
18.10(17A)	Contents of declaratory order—effective date
18.11(17A)	Copies of orders
18.12(17A)	Effect of a declaratory order

CHAPTER 19

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES (Uniform Rules)

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

CHAPTER 20

Reserved

CHAPTER 21

CASE MANAGEMENT PROGRAM FOR FRAIL ELDERLY

21.1(231)	Authority
21.2(231)	Purpose
21.3(231)	Definitions
21.4(231)	Program administration
21.5(231)	Eligibility for CMPFE services
21.6(231)	Admission into the case management program
21.7(231)	Discharge from CMPFE
21.8(231)	Organizational requirements
21.9(231)	Personnel qualifications
21.10(231)	Covered services
21.11(231)	Assessment of consumer needs
21.12(231)	Service plan development
21.13(231)	Monitoring
21.14(231)	Reassessment
21.15(231)	Confidentiality
21.16(231)	Contracting for case management services
21.17(231)	Severability

CHAPTER 22

OFFICE OF SUBSTITUTE DECISION MAKER

22.1(231E,633)	Purpose
22.2(231E,633)	Definitions
22.3(231E,633)	Substitute decision maker qualifications
22.4(231E,633)	Ethics and standards of practice

22.5(231E,633)	Staffing ratio
22.6(231E,633)	Conflict of interest—state office
22.7(231E,633)	Consumers eligible for services
22.8(231E,633)	Application and intake process—guardianship, conservatorship, representative payee and personal representative
22.9(231E,633)	Application and intake process—power of attorney
22.10(231E,633)	Case records
22.11(231E,633)	Confidentiality
22.12(231E,633)	Termination or limitation
22.13(231E,633)	Service fees
22.14(231E,633)	Fee schedule
22.15(231E,633)	Denial of services—appeal
22.16(231E,633)	Contesting the actions of a guardian or conservator
22.17(231E,633)	Contesting the actions of an attorney-in-fact
22.18(231E,633)	Severability

CHAPTERS 23 to 27

Reserved

CHAPTER 28

IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

28.1(231,249H)	Purpose
28.2(231,249H)	Use of funds
28.3(231,249H)	Definitions
28.4(231,249H)	Disbursement of funds
28.5(231,249H)	Eligible use of funds
28.6(231,249H)	Client participation
28.7(231,249H)	Reallotment of unobligated funds
28.8(231,249H)	Prohibited use of senior living trust fund moneys
28.9(231,249H)	Disbursement of SLTF funds to AAA subcontractors
28.10(231,249H)	Reporting requirements
28.11(231,249H)	Severability

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 or variances 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]

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.
6. Iowa aging program instructions issued by the department and signed by the director or the director's designee.

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

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 IAC 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.

“*IAPI*” means the Iowa aging program instruction, the documents issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA.

“*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]

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.

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

“*Administrative action*” means an action or decision made by an owner, employee, or agent of a long-term care facility, or by a governmental agency, which affects the service provided to residents of long-term care facilities.

“*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.

“*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, developed in accordance with the uniform area plan format and IAPI issued by the department, that is submitted to the department every four years, with annual updates, by an AAA in order to receive subgrants from the department’s grants.

“*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.

“*Commission*” means the commission on aging.

“*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.

“*Department on aging*” or “*department*” means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapter 231, 231E and 249H and other applicable laws or rules.

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

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

“*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 annual income level at or below the official poverty guideline as defined in IAPI issued by the department.

“*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.

“*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.

“*Iowa Aging Program Instruction*” or “*IAPI*” means a document issued by the department under a system of numbering and reference regarding operating and reporting methods for AAA or instructions which change frequently.

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

“*Legal representative*” means a person appointed by the court to act on behalf of a participant or tenant, or a person acting pursuant to a power of attorney.

“*Long-term care facility*” means a long-term care unit of a hospital, a licensed hospice program, a foster group home, a group living arrangement, or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

“*Long-term care resident’s advocate program*” or “*LTCRAP*” means the statewide long-term care ombudsman program operated by the department on aging pursuant to the federal Act and Iowa Code chapter 231.

“*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.

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

“*Older individual*” means a person aged 60 or older.

“*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.

“*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.

“*Resident*” means any person residing in a long-term care facility and shall also include individuals seeking admission to a long-term care facility.

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

“*Rural*” or “*rural area*” means any area that is not defined as urban. Urban areas comprise:

1. Urbanized areas (a central place and its adjacent densely settled territories with a combined minimum population of 50,000); and

2. An incorporated place or a census-designated place with 20,000 or more inhabitants.

“*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.

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

These rules are intended to implement Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H.

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

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 provide advocacy, information, educational and prevention services to older individuals so they may find Iowa a healthy, safe, productive and enjoyable place to live and work.

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

17—2.2(231) Definitions. Words and phrases as used in this chapter are as defined in 17 IAC 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

c. From the Web site at www.aging.iowa.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]

17—2.4(231) Director. The director's duties and responsibilities are established in Iowa Code chapter 231.

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

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

2.5(1) The office of the director is comprised of the director, administrative support, public information officer, division administrators and legislative liaison. This office is responsible for the overall planning, policy, management and operations of the department.

2.5(2) The administrative division is responsible for the following:

a. Coordinating, reviewing and processing the multiyear area plans from the area agencies on aging;

b. Developing and processing the State Plan Funding Application to the federal government;

c. Monitoring, assessing, evaluating and auditing the 13 area agencies on aging for general area plan performance;

d. Maintaining accountability for all state, federal and local funds for which the department is responsible;

e. Managing a variety of department administrative responsibilities (including but not limited to budget preparation, personnel activities, ordering supplies and purchasing equipment);

f. Developing and maintaining computerized information systems which compile and analyze data to assess the quality and priorities of the department's programs; and

g. Processing information for presentation in reports, pamphlets, brochures, videotapes and the news media.

2.5(3) The elder programs and advocacy division is responsible for the following:

a. Developing program initiatives related to the department's mission;

- b. Reviewing and commenting upon laws, regulations, and rules that impact programs and services for older individuals;
- c. Program development related to:
 - (1) The continua of long-term care options;
 - (2) Case management program for the frail elderly;
 - (3) Nutrition and health promotion;
 - (4) Information and assistance;
 - (5) Adult day and respite services;
 - (6) Housing, including elder group homes and assisted living;
 - (7) Access to public benefits;
 - (8) Mature worker programs, including pension counseling; and
 - (9) Caregiver programs;
- d. Providing customer services related to older individuals' rights issues;
- e. Monitoring and assessing services related to older individual programs and advocacy issues;
- f. Outreach to older individuals in greatest need (minority, rural, low-income and persons with disabilities);
- g. Coordination and advocacy efforts which involve partnerships with a variety of public and private agencies; and
- h. Providing educational opportunities such as conferences, workshops and other means of informing older individuals and their caregivers.

2.5(4) Office of elder rights. The office of elder rights includes:

- a. The office of the long-term care ombudsman which is responsible for all applicable duties contained within the federal Act and the duties as outlined in 17 IAC 8;
- b. Legal assistance development related to the department's mission and duties as outlined in 17 IAC 7;
- c. Elder abuse policy development, prevention, education and intervention and duties as outlined in 17 IAC 15; and
- d. Providing customer services related to older individuals' rights issues.

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

17—2.6(231) Staffing.

2.6(1) Procedure for employment with the state of Iowa is given in 11 IAC 54, Recruitment, Application and Examination. Applicants for employment who are not chosen for a position shall be notified in writing.

2.6(2) The department may, as provided in 11—51.4(8A), obtain specialized services of individuals or organizations on a contract basis.

2.6(3) Standards of conduct. Each employee of the department is personally responsible for maintaining a high standard of conduct, consistent with 11 IAC 66, Conduct of Classified Employees, and with standards issued by the director.

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

17—2.7(231) Discrimination. The department shall comply with 11 IAC 68, Equal Employment Opportunity and Affirmative Action, and associated provisions of federal and state law in all personnel actions. Any person who believes that the person has been discriminated against shall follow the appropriate procedures given in:

1. 11 IAC 61, Grievances and Appeals;
2. Any applicable collective bargaining agreement;
3. 11 IAC 68, Equal Employment Opportunity and Affirmative Action;
4. Any applicable provisions of federal statute, Iowa law or rule.

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

17—2.8(231) Affirmative action plans. The director shall comply with 11 IAC 68 and with the requirements of Section 900.607 of Title 5 of the Code of Federal Regulations (1981).

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

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 or an AAA subcontractor.

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

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

b. Local complaint procedures of an AAA or an AAA subcontractor 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 decision has 30 calendar days from receipt of written notice of action from the AAA 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 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 IAC 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 IAC 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 IAC 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]

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.

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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 IAC 1 unless the context indicates otherwise. The following definition also applies to this chapter:

“*Unit of general purpose local government*” means a political subdivision of the state whose authority is general and not limited to only one function or combination of related functions.

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

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 the development and implementation of a state plan on aging under Section 305 (42 U.S.C. 3025) of the Act.

4.2(2) Duration and format. The department shall develop a four-year state plan in compliance with the OAA and Iowa Code chapter 231, in order to receive grants under the Act. The state plan shall be developed in accordance with the format, content, time limits, transmittal forms, and procedures specified by the federal AOA. The state plan on aging shall also be in compliance with requirements for state plans under the Act, Section 307 and associated instructions, guidance or direction from the federal AOA.

4.2(3) Process.

a. The department shall hold at least one public hearing on the state plan.

b. The commission shall consider and approve the state plan or state plan amendment prior to submittal to the governor for approval and signature.

c. Each state plan or state plan amendment shall be signed by the governor and submitted to AOA to be considered for approval at least 45 calendar days before the effective date of the plan or the plan amendment.

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

17—4.3(231) Designation of PSA. Unless changed for reasons given in this chapter, the PSA boundaries shall remain the same as those existing on July 1, 1985.

4.3(1) Criteria. The PSA boundaries shall remain the same as those which existed on July 1, 1985, unless altered for cause under the provisions of this chapter. The commission may alter existing PSA boundaries only after giving consideration to and meeting all requirements under Section 305 (42 U.S.C. 3025) of the Act.

4.3(2) PSA boundary alteration procedure. Prior to submission of the multiyear state plan on aging, the commission shall notify the AOA of the intent to either maintain or alter existing PSA boundaries. If the intent is to alter PSA boundaries, the department shall utilize the following process:

a. Notice. The department shall advertise the intent to alter existing boundaries and the availability of applications to serve as a PSA in the affected area by sending notice to all AAA, units of local government, and known groups of older individuals in the affected PSA.

b. Publication. The department shall also publish a notice in at least one newspaper of statewide circulation and the official newspapers as designated for each county served by the affected PSA.

c. Time frame. The notice shall be published a minimum of 50 days in advance of the deadline for submitting applications.

d. Deadline. The notice shall state the precise deadline for requesting application packets as well as for submittal of completed applications.

4.3(3) Application requests. Interested applicants shall send a letter of intent to apply and a request for an application packet to the Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. The letter and request must be received by the department prior to the deadline for requests as established in the notice provided pursuant to paragraph 4.3(2) “d.”

4.3(4) Application content. The application shall contain information that indicates the applicant's ability to:

- a. Meet the criteria established in the Act;
- b. Conform to state law and rules promulgated by agencies having jurisdiction in the affected PSA.

4.3(5) Public hearing.

a. Within 60 days after notification of AOA as required in this rule, the department shall hold a minimum of one public hearing which shall be chaired by the director or the director's designee for the purpose of receiving presentations by the applicants and comments from the public.

b. The department shall designate a date, time and place for the hearing and shall publish notice at least two weeks in advance. If possible, the ICN network will be used to minimize travel for those wishing to participate, except applicants. Applicant presentations are to be given at the designated public hearing site in Des Moines.

c. The department may receive oral and written comments from interested persons prior to the hearing. These comments shall have the same weight and effect as those received at the hearing.

d. Presentations and comments at the hearing shall be time-limited and shall be prearranged with the department.

4.3(6) Department review of applications and comments.

a. The department shall review all applications and comments to determine the applicant most qualified to fulfill the PSA obligations for the affected area.

b. A synopsis of application and comment information shall be prepared for the commission. If requested, the commission may fully review all applications and comments.

c. Within 90 days after the public hearing, the department shall issue a proposed decision. The proposed decision shall be based on analysis of application content, public comments and criteria contained in Section 305 (42 U.S.C. 3025) of the Act.

4.3(7) Commission action. The commission shall act on the boundary alteration proposal or designation of a PSA at its next meeting after receipt of the department's proposed decision. As a part of the commission's action, the commission shall include an effective date which shall be at least 365 days after the final decision.

4.3(8) Appeal.

a. Any applicant for designation as an AAA whose application is denied may appeal the decision pursuant to 17 IAC 13.

b. At the conclusion of the appeal under 17 IAC 13, if the AAA wishes to continue the appeal process, the final decision may be appealed in writing to the assistant secretary of the AOA within 30 calendar days of receipt of the decision.

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

17—4.4(231) Designation of AAA. Unless changed for reasons given in this chapter, the AAA designations shall remain the same as those existing on July 1, 1985.

4.4(1) If, for any reason, there is need to change the AAA designation, the commission shall follow the procedures given in this chapter to designate an entity to be the AAA to serve each PSA as defined in this chapter.

4.4(2) The commission shall alter existing AAA designations only for the following reasons:

- a. Withdrawal by the department of an existing AAA designation as outlined in this chapter;
- b. Voluntary withdrawal by the existing AAA of its designation; or
- c. A change in the designation of the PSA served by the AAA.

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

17—4.5(231) Types of entities that qualify as an AAA.

4.5(1) Qualifications. In order to qualify for designation as an AAA, an entity must have the authority and capacity to perform the functions of an AAA and handle the responsibilities outlined in 17 IAC 5, 6 and 7.

4.5(2) Right of first refusal. When the commission designates a new AAA, the commission shall give the right of first refusal to a unit of general purpose local government provided:

- a. The unit can meet the requirements of this rule;
- b. The unit's boundaries and the boundaries of the PSA are reasonably contiguous.

4.5(3) First refusal process. Should a unit of general purpose local government choose to exercise the right of first refusal, it shall make application for designation as an AAA as provided in this chapter.

4.5(4) Order of preference. When a unit of general purpose local government does not exercise the right of first refusal by making application, applicant preference categories shall be in the following order:

1. An established office on aging which is defined as a legally incorporated entity with employed staff whose single purpose is to administer programs for older individuals.
2. An agency whose single purpose is to administer programs for older individuals.
3. A multipurpose agency as defined in 17—4.6(231).
4. Any public or nonprofit private agency in a PSA which can engage in the planning and provision of a broad range of supportive or nutrition services within the PSA, except any regional or local agency of the state.

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

17—4.6(231) Multipurpose entity. An AAA may be a multipurpose entity with the authority and capacity to administer human services in the PSA.

4.6(1) A multipurpose entity shall delegate all its authority and responsibility under the Act to a single organizational unit within the entity unless it applies for and receives a waiver of this requirement from the department under the authority and applicable procedures of 17 IAC 11 as a part of the application approval process.

4.6(2) A multipurpose entity previously designated as an AAA shall submit its waiver request as a part of its multiyear area plan.

4.6(3) When a multipurpose entity is designated as the AAA for a designated PSA, the governing body of that multipurpose entity shall be responsible to the department for the administration and operation of the aging programs under the multiyear area plan.

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

17—4.7(231) Request for waiver.

4.7(1) A request seeking waiver of the requirement to delegate all authority and responsibilities under the Act to a single organizational unit shall be submitted pursuant to the requirements of 17—11.6(17A,231,ExecOrd11) and shall:

- a. Describe methods for carrying out the AAA's functions and responsibilities under the Act; and
- b. Designate a component unit of the AAA to:
 - (1) Plan and develop policies and programs for older individuals in the multiyear area plan;
 - (2) Administer the area plan; and
 - (3) Provide a visible focal point for advocacy and coordination for the PSA.

4.7(2) The commission may approve a request for waiver if it is determined that the AAA can effectively carry out its functions and responsibilities under the Act without being a single organizational unit.

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

17—4.8(231) Applicant qualification and preference. The method for determining qualified applicants for AAA designation and for giving preference if there is more than one qualified applicant in any of the eligible applicant categories shall be in accordance with this chapter.

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

17—4.9(231) Procedure for designation of an AAA.

4.9(1) Notice. The department shall advertise the need for applications from qualified entities by sending notice to all units of local government, known groups of older individuals, and potential service providers in the affected PSA. In addition, the department shall publish a notice in the official newspapers as designated for each county served by the AAA a minimum of 45 days in advance of the deadline for

submitting applications. The notice shall state the precise deadline for requesting application packets as well as for submittal of completed applications.

4.9(2) Requests. Interested applicants shall send a letter of intent to apply and a request for an application packet to the Department on Aging, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319. This material must be received by the department prior to the deadline for requests as established in the notice provided pursuant to 4.9(1).

4.9(3) Application content. The application shall contain, at a minimum, the following information for the entity:

- a.* Indications of organizational stability;
- b.* Administrative ability and staffing proposals;
- c.* Organizational structure;
- d.* Services offered;
- e.* Fiscal history and management capabilities;
- f.* Proposed methods for development of an advisory council whose members are representative of the PSA and the population served;
- g.* Ability to meet the requirements of this chapter and others governing administration, operation and reporting requirements for AAA;

4.9(4) Public hearing.

a. The department shall hold a minimum of one public hearing which shall be chaired by the director or the director's designee for the purpose of providing presentations by applicants and receiving comments from the public.

b. The department shall designate a date, time and place for the hearing and publish notice at least two weeks in advance. If possible, the ICN network will be used to minimize travel for those wishing to participate.

c. The department may receive oral and written comments from interested persons prior to the hearing. These comments shall have the same weight and effect as those received at the hearing.

d. Presentations and comments at the hearing shall be time-limited and shall be prearranged with the department.

4.9(5) Department review of applications and comments. Subsequent to the public hearing, the applications shall be sorted according to types of agencies and in the order of preference categories as given in 4.9(7). The department shall review all applications and comments based on the criteria established by this chapter to determine the applicants qualified for an on-site assessment. A synopsis of this information shall be prepared for the commission.

4.9(6) On-site assessment. The purpose of the assessment is to verify information provided in the application.

a. The department shall make arrangements for the assessment with the qualified applicant(s).

b. A written tool shall be used to conduct the assessment.

c. The department shall present to the commission a written report of the assessment and a written recommendation regarding the designation of an AAA.

d. The basis for the recommendation shall be the application review, the public comments, and the on-site assessment.

4.9(7) Preference process. Preference categories may be found in subrule 4.5(4).

a. The department shall determine whether any applicants in the first preference category are qualified.

b. If there is more than one qualified applicant in this category, the more qualified applicant will be determined by review, comparison and analysis of how well each applicant meets the criteria set forth in this chapter.

c. When the more qualified applicant has been determined, the designation may be offered to that applicant.

d. If for any reason that applicant is unable to accept the designation, the department may offer the designation to the second more qualified applicant in the first category, or the more qualified applicant in the second preference category shall be determined. A review, comparison and analysis shall be made

between the applicant selected in the second preference category and the second-place applicant under the first category.

e. The designation may be offered to the more qualified of the two applicants. If for any reason that applicant is unable to accept the designation, the same process shall continue through the preference categories as given in this rule.

4.9(8) Commission action. When designating an AAA, the commission shall consider the following:

- a.* The synopsis of the application review as performed by the department;
- b.* The findings of the on-site assessment; and
- c.* Recommendations of the department.

4.9(9) The commission shall act on the designation of an AAA at its next meeting after receiving the department's recommendation.

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

17—4.10(231) Withdrawal of AAA designation. When an AAA cannot, or will not, fulfill its responsibilities as given in 17 IAC 5, the commission may withdraw the designation for reasons including but not limited to:

1. Substantial violation of grant terms and conditions or requirements and standards set forth in state law or rules promulgated by the department or other agencies having jurisdiction;
2. Inadequate performance of the responsibilities outlined in 17 IAC 5, 6, or 7 and any other chapters governing administration, operation and reporting for AAA;
3. The AAA's multiyear area plan is not approved by the commission;
4. Actual performance varies drastically from planned performance;
5. Financial instability;
6. Deficiency in implementation of programs;
7. Contractual or direct services to the older individuals commenced more than two months after the approved project period;
8. Reporting of fiscal or performance data does not comply with written procedures issued by the department; or
9. The AAA has been unable or has refused to take timely remedial action to correct cited deficiencies within the given time frame established for correction.

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

17—4.11(231) Procedures for withdrawal of AAA designation.

4.11(1) When there is reason to withdraw AAA designation as outlined in this chapter, the department shall:

- a.* Notify the AAA in writing of the deficiency or deficiencies that form the reason for the withdrawal;
- b.* Provide technical assistance to determine the staffing, management, fiscal or other problems causing the reason for withdrawal;
- c.* Assist in developing a written action plan for correcting the reason within a given time frame;
- d.* Monitor the progress toward correcting the deficiency;
- e.* Report to the AAA in writing the findings of the monitoring; and
- f.* Determine appropriate commission action based on the progress as determined in monitoring progress reports, which may include:
 - (1) Placing the AAA in probationary status;
 - (2) Retrieval or withholding of funds;
 - (3) Suspension or withdrawal of AAA designation.

4.11(2) The department shall give written notice to the AAA of the right to appeal the designation withdrawal pursuant to 17 IAC 13.

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

17—4.12(231) Department action subsequent to withdrawal.

4.12(1) Notification and plan. When AAA designation has been withdrawn, the department shall:

- a. Notify the AOA in writing of the designation withdrawal.
- b. Implement a plan for continuity of services in the affected PSA.
- c. Designate a new AAA in the PSA in accordance with this chapter.

4.12(2) Continuity of services. To ensure continuity of services in the affected PSA, the department may:

- a. Perform the responsibilities of the AAA;
- b. Assign the responsibilities of the AAA to another agency in the PSA; or
- c. Submit a written request to the AOA for an extension of the current AAA designation for up to 180 days. The request must document the need for an extension to provide continuity of services in the affected PSA.

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

17—4.13(231) Technical assistance. The department may provide assistance as follows:

1. To an AAA that is unable to meet target dates, that has requested training, or in order to determine remedial action for performance deficiencies.
2. To any organization, agency, association or individual representing or serving the needs of older individuals.

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

17—4.14(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.

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

CHAPTER 5
DEPARTMENT FISCAL POLICY

[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) Definitions. Words and phrases as used in this chapter shall be as defined in 17 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“*Costs of administration*” means all direct and indirect costs incurred by the grantee in managing a grant, including all audit and policy board expenses incurred in the support of an AAA director.

“*Fund balance policy*” or “*FBP*” means the instructions established in Iowa aging program instructions (IAPI) issued by the department on aging covering the calculation of reallocations in specific allocations.

“*Local match*” means the equivalent cash value of third-party in-kind contributions 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 grant-supported project or program not borne by the department.

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

“*Poverty*” means those persons whose income is below the official poverty guideline (as defined each year by the Office of Management and Budget and adjusted by the Secretary of DHHS) in accordance with Subsection 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)). The annual DHHS poverty guidelines provide dollar thresholds representing poverty levels for households of various sizes.

“*Program income*” or “*project income*” or “*contributions*” means grant-related income or gross income earned by a grantee or its subcontractors from activities, part or all of the cost of which is borne as a direct cost by a grant, or income counted as a direct cost toward meeting a cost-sharing or matching requirement of a grant; such as fees or participant contributions for services performed during the grant or subgrant period, proceeds from the sale of tangible property, usage or rental fees, and patent or copyright royalties.

“*Third-party in-kind contributions*” means 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, the subgrantee, or a cost-type contractor under the grant or subgrant.

“*Title*,” followed by a Roman numeral, with or without an alphabetic reference (e.g., Title III or Title III-C), means requirements or funding covered by the OAA.

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

17—5.2(231) Grants to area agencies on aging.

5.2(1) General. The department shall make annual allotments to each AAA to support a portion of the costs of administration and services under the multiyear area plan.

5.2(2) Types of OAA allotments. Each AAA receives designated and distinct allotments for:

- a. Supportive services – Title III-B;
- b. Congregate nutrition services – Title III-C(1);
- c. Home-delivered nutrition services – Title III-C(2);
- d. Preventative health services – Title III-D;
- e. National Family Caregiver Support program – Title III-E;
- f. Other federal and state appropriations received by the department.

5.2(3) Transfers between supportive and nutrition services funds are allowable under the OAA and are specifically addressed in area plan instructions, the reporting manual or IAPI.

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

17—5.3(231) Limitations on use. Except as provided in this rule, the AAA shall use each allotment for its designated purpose.

5.3(1) Funding as stated on notices of grant awards and NSIP funding released by the department shall be available for use by each AAA for the fiscal year July 1 through June 30 annually.

5.3(2) A maximum of 10 percent of the Title III funds received from the department, as shown in the annual allotment tables, may be used for administration, unless otherwise specified in IAPI.

5.3(3) AAA shall expend no less than the designated amounts, as given in 17 IAC 6, of their Title III-B allotment, less administration costs, for services in the priority service categories of:

- a. Access;
- b. In-home services; and
- c. Legal assistance.

5.3(4) Any unexpended Title III funds which were allotted by the department for administration as shown in the department's annual allotment tables may, in the subsequent fiscal year, be used only for program service expenditures.

5.3(5) Program income, as forecast to be received for the fiscal year identified in the area plan shall be at least 85 percent of the program income earned in the most recently completed fiscal year.

5.3(6) State funds shall not be carried over unless specifically authorized by state law.

5.3(7) OAA funds may be carried over upon department approval of an AAA written application.

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

17—5.4(231) Expenditures in rural areas. The department shall allot to rural areas at least 105 percent of the amounts the areas spent under Title III of the Act during the fiscal year 1978.

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

17—5.5(231) Funding formulas.

5.5(1) OAA federal funds—Title III.

a. Administration allotments to area agencies. The department shall award administration funds available to AAA in each fiscal year from funding under the OAA.

b. Each AAA shall receive the greater of one-fourth of 1 percent of the funds available for allotment, or \$24,000, to be used for administration or for services.

c. Each AAA shall receive the greater of four-hundredths of 1 percent or \$4,000 for each county in the AAA's planning and service area to be used for administration or services.

d. If the sum of the amounts generated under paragraphs "b" and "c" for all AAA exceeds 10 percent of the amount available to the department for AAA allotment, the department shall reduce the amount allotted under paragraph "c" by an amount sufficient to result in the sum for all AAA generated by paragraphs "a" and "b" being equal to or less than 10 percent of the amount available to the department.

5.5(2) Intrastate service funding. Funds remaining after the application of 5.5(1), paragraphs "b" and "c," shall be allocated to each AAA proportionate to the AAA's weighted population to the total weighted population of the state. The weighted population shall be the sum of the number of persons residing in the planning and service area with the following characteristics multiplied by the applicable weights:

<u>Factor</u>	<u>Weight</u>
Persons aged 60 and older	1
Minority persons aged 60 and older	1
Persons aged 60 and older at or below the poverty level of income	2

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

17—5.6(231) State appropriations and case management allotments.

5.6(1) Elderly services. All state elderly services funds appropriated to the department, excluding those otherwise specifically identified in the appropriation, shall be allocated to AAA on the basis of persons aged 60 and older and minority persons aged 60 and older and double-weighted for persons aged 60 and older at or below the poverty level of income in the AAA planning and service area. Elderly services funds set aside for the case management program for the frail elderly shall be allocated on the

basis of a \$45,000 block grant per AAA with the balance of funds allocated on the AAA's proportion of persons aged 60 and older.

5.6(2) Senior living program. The department shall allocate funds received from the senior living trust established in Iowa Code section 249H.4 to each AAA by utilizing, at a minimum, a formula that:

a. Shall triple-weight all of the following:

- (1) Individuals aged 75 and older.
- (2) Individuals aged 60 and older who are members of a racial minority.
- (3) Individuals aged 60 and older who reside in rural areas.
- (4) Individuals aged 60 and older who have incomes at or below the official poverty guideline as defined each year by the federal Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

b. Shall single-weight for individuals aged 60 and older.

The department shall use the best available population data based on United States census reports to calculate allotments under this subrule.

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

17—5.7(231) Program allotment calculations.

5.7(1) Title III. The department shall calculate all allotments to AAA based on the result obtained in rule 17—5.6(231).

5.7(2) NSIP. AAA will receive a portion of the NSIP allotment to the state based on the proportion of an area's eligible meals related to the total of NSIP-eligible meals for all AAA.

5.7(3) Other. The department shall allocate other available funding as defined in each respective program.

5.7(4) Population data. Where applicable, the department shall use population data based on the United States Census to calculate AAA allotments under this chapter. The data shall then be used to calculate allotments for the next fiscal year starting after the data are available.

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

17—5.8(231) Funding estimates. It is the intent of the department to provide AAA with timely access to all allotments, whether actual or estimated, consistent with an orderly process of area plan revision and amendment. To implement the intent, the following procedures shall be followed:

5.8(1) On or before July 1 of each year, the department shall issue the planning estimate revision reflecting any federal or state awards received by that date and used to estimate any changes to the fiscal year funding allotments beginning on July 1 of that year.

5.8(2) On December 1 of each year, the department shall issue the annual planning estimate which shall reflect the most current federal awards received by that date for use in estimating projected funding allotments to AAA for the next two fiscal years.

5.8(3) On December 1 of each year, the department shall issue revised allotments for the current fiscal year which announce the projected funding available to each AAA.

5.8(4) Funds for which an AAA fails to apply will be allocated to a project consistent with the goals and objectives of the department.

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

17—5.9(231) Matching funds.

5.9(1) Financial participation.

a. State plan administration. The department shall use its federal allotment for state plan administration to pay not more than 75 percent of the costs of administering the state plan.

b. Area plan administration. An AAA may use its federal allotment to pay not more than 75 percent of the cost of administering an area plan.

c. Area plan services. An AAA may use its federal allotments for supportive, nutrition, and frail elderly services and its state elderly services allotment to pay not more than 85 percent of the costs of these activities.

5.9(2) OAA nonfederal match requirements. The nonfederal match may be either by allowable costs or the value of nonfederal, third-party in-kind contributions.

5.9(3) The 15 percent elderly services match requirement may be met by allowable costs or the value of third-party in-kind contributions from local sources.

5.9(4) Source of nonfederal share.

a. Cash and in-kind match. At least 25 percent of the required minimum nonfederal share of area plan administration and services in each fiscal year shall be in the form of allowable costs of the state or local public agencies, or in the form of in-kind contributions from local public agencies.

b. State match. One-third of the nonfederal share required for federally funded services shall be in the form of state-appropriated funds.

5.9(5) Match deficiency. If a match deficiency is identified regarding the nonfederal share, provisions will be made to rectify the deficiency in the following fiscal year or reduce the amount of funding to a level commensurate with the nonfederal share.

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

17—5.10(231) Allowable use of federal and state funds for multiyear area plan administration.

5.10(1) *Federal funds.* The AAA shall not use more than the amount received under subrule 5.5(1) and at least the amount of local match prescribed in subrule 5.9(3) for costs of administration.

5.10(2) *State funds.* Sums appropriated each fiscal year for AAA administration shall be distributed in equal amounts for each planning and service area to be used as a match for federal administrative funds distributed under rule 17—5.5(231).

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

17—5.11(231) Reallotment.

5.11(1) *Federal funds.* The amount of federal Title III funds which are not expended or obligated for goods and services or both to be provided by the last day of the previous federal budget year shall be available to the department for reallotment.

5.11(2) *Unused state funds.* If the department determines prior to the end of the fiscal year that an AAA will have unused state funds, the department may reallocate the unused funds to one or more AAA in accordance with demonstrated utilization or by a reallocation method specified in IAPI. The area agencies receiving these reallotted funds shall obligate them by the end of the fiscal year in which they are reallotted.

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

17—5.12(231) Restriction on delegation of authority to other agencies. The department and area agencies on aging may not delegate to another agency the authority to award or administer funds pursuant to this chapter, except as provided in 17 IAC 4.

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

17—5.13(231) Records and reports.

5.13(1) The grantee is required to submit all performance and fiscal reports published in the department's service and fiscal reporting manual or as provided in an IAPI. Reports not received by the established due date shall be considered delinquent.

5.13(2) Recipients of funds from the department shall retain fiscal and programmatic records for not less than three years after the fiscal year in which the expenditure occurred.

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

17—5.14(231) State reviews and audits.

5.14(1) The audit costs shall be negotiated and paid for by the grantee from the applicable grants.

5.14(2) The department shall provide the grantee with guidelines to be followed by the auditor.

5.14(3) Each AAA shall submit copies of the audit report as directed in the guidelines issued by the department.

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

17—5.15(231) Acquisition of goods and services.

5.15(1) Authority. The department and the AAA may acquire goods and services as necessary to carry out their responsibilities under the OAA, regulations, state laws or rules by the following methods:

- a. Purchase.
- b. Lease or rental.
- c. Donation.

5.15(2) Suppliers of goods and services may be:

- a. Federal, state and local governmental agencies.
- b. Public or private nonprofit organizations.
- c. Persons as defined in Iowa Code section 4.1(20).

5.15(3) Standards. All acquisitions of goods and services shall be in compliance with federal regulations, 45 CFR §74, August 25, 1994, Administration of Grants, federal law or Iowa law. Where all other factors are equal, preference will be given to Iowa contractors in compliance with state law.

5.15(4) Utilization of small businesses and minority contractors. Positive efforts shall be made to utilize small business and minority-owned business sources for supplies and services.

a. Records shall be maintained for a period of not less than three years following the fiscal year for which the contract was in effect showing names and identification numbers of small business or minority contractors contacted in regard to each contract.

b. This subrule shall not be construed to require the award of contracts that favor small business or minority contractors when this would result in higher cost to the department or the AAA.

5.15(5) Free competition. All acquisition transactions, whether negotiated or advertised, shall be conducted in a manner to provide maximum open and free competition. Special attention shall be given to preventing organizational conflicts of interest or other noncompetitive practices which may restrict or eliminate competition.

5.15(6) Description of goods or service. Purchase, lease or rental invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical or operational requirements for the requested material, product, or service.

a. The description shall not contain features which unduly restrict competition.

b. "Brand name or equal" descriptions may be used to define the required performance or other unique requirements of a proposed acquisition. When so used, the specific quality, operational or performance features of the name brand which must be met by bidders shall be clearly specified.

c. The invitations for bids shall clearly set forth all requirements that the bidder shall fulfill in order for the bid to be evaluated and accepted.

5.15(7) Appropriate acquisition documents and prohibited costing method. The type of method used (i.e., fixed-price contract, cost reimbursement contract, purchase order, incentive contract, negotiation) shall be appropriate for the particular acquisition and for promoting the best interest of the program involved. The "cost plus a percentage of cost" method of contracting is prohibited.

5.15(8) Bids. To procure goods or services, the department or AAA shall use the following procedures:

a. When the estimated one-year value is equal to or greater than \$5,000 but less than \$50,000 or when the estimated multiyear aggregate value, including all renewals, is \$15,000 or more, but is less than \$150,000, the department or AAA, in the department's or AAA's sole discretion, shall use either an informal or formal competitive selection process.

b. When the estimated one-year value of the contract is equal to or greater than \$50,000 or the estimated value of a multiyear contract in the aggregate, including all renewals, is equal to or greater than \$150,000, the department or AAA shall use a formal competitive selection process to procure the goods or services.

c. The requirement to use competitive selection to obtain a provider or supplier applies whether an AAA obtains those services from a public or private entity. If the successful proposal for the service or supplier is from a public entity and the contract is designated as a 28E agreement, the AAA shall not be the initiating agency for that agreement.

5.15(9) Exceptions. Acquisitions may be accomplished through noncompetitive negotiation if it is not feasible to use competitive selection. Contracts may be negotiated under the following circumstances:

- a.* The item is available only from a single source; or
- b.* A public exigency or emergency creates an urgency for the item that will not permit delays incident to competitive selection; or
- c.* The federal grantor agency authorizes noncompetitive selection; or
- d.* After solicitation of a number of sources, competition is determined inadequate.

When the client of a specific service category has freedom of choice between multiple AAA-authorized service providers, the limitations given above do not apply.

5.15(10) Selection of provider. When bids are obtained, the award shall be made to the bid that is responsive to the requirements of the solicitation and is most advantageous to the item recipient when price and other factors are considered. Any and all bids may be rejected and new bids requested if the bids received are not acceptable.

5.15(11) Methods of advertising. The invitation for bids shall be advertised by two separate publications in the official newspaper(s) designated by the county in which the goods or services are to be furnished. Additional publication in newspapers other than those above is not prohibited. The first publication shall not be less than 30 days prior to the date set for receiving bids. Additional methods of advertising may be used including contacting minority contractors as specified in subrule 5.15(4).

5.15(12) Responsible bidders. Whether obtained through formal advertising or negotiation, contracts shall be made only with responsible suppliers who possess the ability to perform successfully under the terms and conditions of the contract. Consideration shall be given to matters such as contractor integrity, record of past performance, financial and technical resources, or accessibility to other resources necessary for satisfactory completion of the contract.

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

17—5.16(231) Restrictions for multipurpose agencies designated as AAA. When a multipurpose agency designated as the grantee for an AAA is the single organizational unit serving the designated planning and service area, no grant or contract is permitted between the AAA office and another division, officer or personnel of the multipurpose agency without the express approval of the department.

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

17—5.17(231) Records—contract administration. The department and AAA shall maintain the following records as applicable:

5.17(1) Records for purchases of more than \$50,000 or \$150,000 aggregate shall provide at a minimum the following documentation:

- a.* Copies of publication and other advertising;
- b.* Minority contractors contacted;
- c.* Justification for the use of negotiation in lieu of advertising;
- d.* Basis for selection of supplier;
- e.* Basis for the price negotiated.

5.17(2) A system for contract monitoring shall be maintained by the department and AAA to ensure supplier compliance with terms, conditions and specifications of the contract and to ensure adequate and timely follow-up as necessary for failure to perform or for any other problem with delivery of goods or services.

5.17(3) All parties utilizing funds from the department and AAA shall maintain records and make reports as required by the terms of the contract to provide for efficient contract administration and monitoring.

5.17(4) All records and reports shall be open to public inspection unless otherwise provided by law.

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

17—5.18(231) Recapture of funds for facilities.

5.18(1) *Recapture from owner.* The United States government and the state of Iowa are entitled to recapture the appropriate portion of the funds used by a facility owner for acquisition or construction of a facility used for senior programs or services. The owner shall notify the department in writing if within 10 years after acquisition or within 20 years after construction completion the following circumstances apply:

- a. The owner of the facility ceases to be a public or nonprofit agency; or
- b. The facility is no longer used for senior activities.

5.18(2) *Amount of recapture.* The amount recovered under 5.18(1) is that proportion of the current value of the facility equal to the proportion of federal or state funds contributed to the original cost. The current value of the facility is determined by written agreement between the owner of the facility and the federal or state government, or by an action in the federal or district court in the district where the facility is located.

5.18(3) *Recapture in leased facility.*

a. For a facility no longer leased for senior activities, the department shall recapture a portion of federal and state funds from the lessors of that facility within a period of time equal to one year for every \$1,000 of permanent alterations or renovations.

b. *Recapture share.* The amount recovered under paragraph 5.18(3) “a” shall be the total federal and state funds contributed to the original cost reduced by \$1,000 for each year the facility was used for senior programs or services.

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

17—5.19(231) Property management.

5.19(1) *Responsibilities of grantees and suppliers.* All grantees or suppliers that use funds received from the department or AAA to purchase equipment or property, including real property, shall maintain appropriate records of all such property.

5.19(2) *Transfer upon termination.* Upon the termination of the grant or contract period, the grantee or supplier is required to transfer the property back to the department or AAA. The property shall be returned in as near the original condition as possible.

5.19(3) *Standards.* The standards and guidelines utilized by the department to implement this rule shall be in compliance with U.S. Department of Health and Human Services property management regulations, Administration of Grants, 45 CFR 74, November 4, 1988, unless a higher standard is required by this chapter. Iowa Aging Program Instruction 93-11, dated December 14, 1992, was issued as supplemental guidance to these regulations.

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

These rules are intended to implement Iowa Code chapters 231 and 249H.

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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 IAC 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 the 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;
d. IAPI issued by the department.

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 four-year period and methods to obtain those objectives; and
c. Client estimates. Area agencies shall estimate the number of older individuals with the characteristics identified in Form 3 A 1 of an IAPI.

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 shall appear as a distinct agenda item 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 advertise the hearing by sending notice to all known groups of older individuals, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

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 IAC 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 in department IAPI. 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]

17—6.3(231) Area agency administration.

6.3(1) Full-time director. The AAA shall employ a qualified full-time 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 employment affirmative action plan which shall be submitted as part of the profile required in this chapter. All affirmative action plans shall comply with the requirements as given in IAPI.

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]

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 Web site www.aging.iowa.gov.

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

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 IAPI of the department;

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 long-term care resident's advocate 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]

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 subgrants or 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]

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 or subgrantees 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]

17—6.11(231) Contracts and subgrants.

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 consistent with the goals of the AAA as stated in the area plan.

c. Services shall mean the services described in the uniform definitions of services contained in IAPI issued by the department.

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

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(3). The following services may be furnished directly by the AAA and are exempt from the requirements in subrule 6.12(3):

- 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.

6.12(2) Public hearing. Prior to the submission of the area plan, the AAA shall hold a public hearing to obtain comments regarding direct service(s) planned by the AAA. This hearing may be held separately or as a part of the hearing for the area plan.

a. Notice of the hearing shall be published at least 30 days prior to the hearing and shall specify the direct service(s) which the AAA plans to provide.

b. The AAA shall prepare and submit to the department a written record of the public hearing.

6.12(3) 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(4) 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]

17—6.13(231) Noncompliance. When an AAA's performance in any service does not meet the standards set by the department, the department shall initiate the procedure outlined in 17 IAC 4.

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

17—6.14(231) Priority service expenditures.

6.14(1) An AAA shall spend a specified percentage of its supportive services allotment on priority services, excluding the amount of federal funds used for administration. Funds shall be spent in each of the following priority service categories in at least the minimum percentage most recently determined by the commission:

a. Access services as defined in this chapter – 10 percent;

b. In-home services – 5 percent; and

c. Legal assistance – 3 percent.

6.14(2) Public hearing. The hearing on the area plan shall include the priority services and priority services requirement as a distinct agenda item with a specific time set for the beginning of that portion of the hearing.

a. Discussion at the hearing shall include the level of priority services being provided by all other agencies.

b. Record of the public hearing. The AAA shall prepare a written record of the hearing.

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

17—6.15(231) Waivers of priority service expenditures.

6.15(1) An AAA shall request a waiver from the priority service expenditures in 17—subrule 5.3(3) 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 IAC 11.

6.15(2) The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 17—6.14(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]

17—6.16(231) Requirements for service providers.

6.16(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 in accordance with instructions issued by the department in an IAPI;
- 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.

6.16(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.

6.16(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.

6.16(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.

6.16(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]

17—6.17(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:

6.17(1) Demonstrated need—use of funds. 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.

6.17(2) Restrictions. An AAA shall not use funds received from the department in connection with 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 shall benefit all eligible persons in the PSA, particularly older individuals in the greatest economic and social need and low-income minority persons.

6.17(3) *Department review.*

a. An AAA shall inform the department in writing not less than 160 calendar days prior to the initiation of an entrepreneurial activity of an ongoing nature. The notification shall describe the proposed activity, proposed source of funds, and the needs being addressed.

b. The department shall respond in writing within 30 calendar days to acknowledge receipt of the information, request clarification, or request a delay in implementation. For informational purposes, the department shall provide a copy of the response to the commission.

c. An AAA that receives no response from the department within 30 days may assume that no additional submission of information is required.

d. If unresolved issues remain after 60 calendar days of receipt of the information, the commission will be informed of those issues at the next commission meeting.

6.17(4) *Commission or department action.* An AAA contracting for entrepreneurial activities shall:

a. Provide the contract to the department for review prior to signing; and

b. Include the activities in the area plan, plan amendments or revisions; and

c. Require a minimum payment from the contractor to fully cover all costs of the activity, including overhead and administrative costs, to eliminate the possibility of use of Title III funds.

6.17(5) *Community interest.*

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

b. An AAA shall work cooperatively with community leaders, groups and organizations in order to participate in entrepreneurial activities.

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

17—6.18(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.

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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 IAC 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 IAC 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 IAC 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 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 IAC 6 for preference in service delivery.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

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 director and supplied to each AAA 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]

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 and subsequent six-month assessments 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]

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 IAC 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 in writing at least 30 days prior to 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]

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]

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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 RESIDENT'S ADVOCATE/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) Definitions.

“*Designee*” means an employee who is designated as a regional long-term care ombudsman.

“*Resident advocate committee member*” means a volunteer appointed by the director or the director’s designee pursuant to Iowa Code section 135C.25.

“*Resident’s advocate/ombudsman*” means the state long-term care ombudsman.

“*Volunteer long-term care ombudsman*” means a volunteer who has successfully completed all requirements and has received certification from the resident’s advocate/ombudsman.

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

17—8.2(231) Purpose.

8.2(1) General rule. The department shall operate a statewide long-term care resident’s advocate/ombudsman program in cooperation with appropriate state and local agencies such as the department of inspections and appeals, the department of human services, and the AAAs.

8.2(2) Resident advocate committee and volunteer long-term care ombudsman program administration. The program shall include the administration of the resident advocate committee program identified in Iowa Code section 231.4 and the volunteer long-term care ombudsman program identified in Section 712(5) of the Older Americans Act.

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

17—8.3(231) Long-term care resident’s advocate/ombudsman duties.

8.3(1) Program administration. The department shall employ an individual (hereinafter called the resident’s advocate/ombudsman) to administer the long-term care resident’s advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 231.

8.3(2) Duties of the resident’s advocate/ombudsman (also known as the state long-term care ombudsman). In accordance with the Older Americans Act, the resident’s advocate/ombudsman shall perform the following duties:

- a. Identify, investigate and resolve complaints and grievances that are made by or on behalf of residents that may adversely affect the health, safety, welfare or rights of residents;
- b. Administer the resident advocate committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;
- c. Monitor the development and implementation of federal, state and local laws, rules, regulations and policies that relate to long-term care facilities;
- d. Provide information to the public and to state and local agencies about problems of persons in long-term care facilities;
- e. Train long-term care facility staff in conjunction with training provided to resident advocate committee members;
- f. Administer the volunteer long-term care ombudsman program;
- g. Assist in the development of organizations to participate in long-term care;
- h. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities;
- i. Designate regional long-term care ombudsmen (hereinafter called designees) to perform any of the above duties; and
- j. Approve certification for volunteer long-term care ombudsmen.

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

17—8.4(231) Access requirements. The resident’s advocate/ombudsman or designee shall have access to long-term care facilities, private access to residents, access to residents’ personal and medical records and access to other records maintained by the facilities or governmental agencies, pertaining only to the person on whose behalf a complaint is being investigated.

8.4(1) *Visits to facilities.* The resident's advocate/ombudsman or designee may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident's advocate/ombudsman's or designee's presence, the resident's advocate/ombudsman or designee may communicate privately and without restriction with any resident who consents to the communication.

8.4(2) *Visits to resident's living area.* The resident's advocate/ombudsman or designee shall not observe the private living area of any resident who objects to the observation.

8.4(3) *Restrictions on visits.* The facility staff member in charge may refuse or terminate a resident's advocate/ombudsman's or designee's visit with a resident only when written documentation is provided to the resident's advocate/ombudsman or designee that the visit is a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

8.4(4) *Request agency assistance.*

a. The resident's advocate/ombudsman or designee may request cooperation, assistance and data that will enable the resident's advocate/ombudsman or designee to execute any of the resident's advocate/ombudsman's or designee's duties and powers under the Older Americans Act from any governmental agency or its agent or AAA.

b. Only the state long-term care ombudsman shall have access to adult abuse case information.

8.4(5) *Facility records.* Copies of a resident's medical or personal records maintained by the facility, or other records of a long-term care facility, may be made with the permission of the resident, the resident's responsible party, or the legal representative of the resident.

a. The office of the long-term care ombudsman will pay for copies as requested.

b. All medical and personal records shall be made available to a volunteer long-term care ombudsman for review if:

(1) The volunteer long-term care ombudsman has the permission of the resident, the legal representative of the resident or the responsible party; or

(2) Access to the records is necessary to investigate a complaint; and

(3) The volunteer long-term care ombudsman obtains approval of the resident's advocate/ombudsman or designee; or

(4) The information is sought by court order.

c. The resident's advocate/ombudsman program shall keep all records and information confidential according to the Older Americans Act.

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

17—8.5(231) Authority and responsibilities of the department.

8.5(1) *Confidentiality and disclosure.* The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

a. No member of the resident's advocate/ombudsman program shall disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

8.5(2) *Referral of complaints or grievances.*

a. When the resident's advocate/ombudsman or designee encounters facts which may indicate the failure to comply with state or federal laws, rules or regulations, the resident's advocate/ombudsman or designee shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman or designee encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman or designee shall refer the case appropriately for administrative and legal assistance.

c. When the resident's advocate/ombudsman or designee encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman or designee shall initiate follow-up activities on all referred complaints and grievances.

8.5(3) Reporting. The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances regarding long-term care facilities in accordance with requirements of the Act and Iowa Code section 231.42.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, resident advocate committees and the volunteer long-term care ombudsman program shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of the affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident or complainant or pursuant to 17—9.13(231).

d. The complaint and grievance documentation and reporting system shall include, where available:

- (1) The source and date of the complaint or grievance;
- (2) Name, location and type of facility;
- (3) Facility licensure and certification status;
- (4) Description of the problem;
- (5) Billing status of the resident;
- (6) Method by which the complaint was received; and
- (7) Description of follow-up activities and date of resolution.

e. The resident's advocate/ombudsman program shall prepare an annual report analyzing complaint statistics collected and provide this report, by January 15 of each year, to the following agencies and others as deemed appropriate, including but not limited to: AOA, the office of the governor, the general assembly of Iowa, the department of inspections and appeals, the department of human services, and AAAs.

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

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

8.6(1) Application. Any individual may apply to the resident's advocate/ombudsman program to become a volunteer long-term care ombudsman. A resident advocate committee member shall be given priority in the selection process and may become a certified volunteer long-term care ombudsman pending successful completion of the required training and background checks.

a. *Application forms.* Application forms may be obtained from the resident's advocate/ombudsman program at the department on aging address listed in rule 17—2.1(231) 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 rule 17—2.1(231).

8.6(2) Conflict of interest.

a. Prior to certification, applicants for the 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 resident's advocate/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 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 resident's advocate/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 volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 24 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 volunteer long-term care ombudsmen.

8.6(5) Approval for certification. Final approval for certification as a volunteer long-term care ombudsman shall be made by the resident's advocate/ombudsman and shall be subject to the applicant's successful completion of the required training and to a favorable report from the instructor. The resident's advocate/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 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 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 residents of the facility, the facility administrator and staff, and the resident's advocate/ombudsman or a representative from the office of the state long-term care resident's advocate/ombudsman program.

c. After the volunteer's successful completion of one year as a volunteer long-term care ombudsman, the resident's advocate/ombudsman may recertify the 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 resident's advocate/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 resident's advocate/ombudsman.

b. Volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the resident's advocate/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 volunteer shall do so in writing to the resident's advocate/ombudsman. The final determination shall be made by the resident's advocate/ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

a. Reasons for revocation. A volunteer long-term care ombudsman's certification may be revoked by the resident's advocate/ombudsman for any of the following reasons: falsification of information on the application, breach of confidentiality, acting as a 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 resident's advocate/ombudsman to violate the rules or intent of the program.

b. Notice of revocation. The resident's advocate/ombudsman shall notify the 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 resident's advocate/ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The resident's advocate/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 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 volunteer long-term care ombudsman's presence, the 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 volunteer long-term care ombudsman shall not observe the private living area of any resident who objects to the observation.

c. Restrictions on visits. The facility staff member in charge may refuse or terminate a volunteer long-term care ombudsman visit with a resident only when written documentation is provided to the volunteer long-term care ombudsman that the visits are a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician, and the order shall be documented in the resident's medical record.

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

a. Conducting initial inquiries regarding complaints registered with the long-term care resident's advocate/ombudsman;

b. At the request of the resident's advocate/ombudsman or designee, providing follow-up visits on cases investigated by the resident's advocate/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 resident's advocate/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. Concerns identified should be discussed with the chair of the resident advocate committee to determine an appropriate course of action to reach resolution;

g. Completing all reports and submitting them to the resident's advocate/ombudsman in a timely manner; and

h. Completing exit interviews when the volunteer ombudsman resigns.

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

These rules are intended to implement Iowa Code chapter 231.

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

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.

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

17—9.1(231) 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.

“*Committee*” means a resident advocate committee as provided in Iowa Code sections 135C.25 and 231.44.

“*Relatives*” means any one of the following: 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.

“*Resident’s advocate/ombudsman*” means the state long-term care resident’s advocate as provided in Iowa Code section 231.42.

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

17—9.2(231) Resident advocate committees established.

9.2(1) *Committee for each licensed facility.* Pursuant to Iowa Code sections 135C.25 and 231.41 through 231.44, a resident advocate committee shall be established for each licensed health care facility as defined in Iowa Code section 135C.1 and shall operate within the scope of the Code of Iowa and this chapter.

9.2(2) *Committee membership.* The committee shall consist of a number of members sufficient to meet the needs of the residents. The minimum number of members in facilities licensed to serve fewer than 15 residents is one; the minimum number of members in facilities licensed to serve 15 or more residents is two.

9.2(3) *Committee member residence.* Committee members shall reside within the service area of the facility.

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

17—9.3(231) Application for committee membership. An interested individual may apply to the department for membership. Individuals, AAAs and other organizations are encouraged to recommend potential volunteers for committee membership to the department pursuant to Iowa Code section 135C.25.

9.3(1) *Application forms.* Application forms may be obtained from the department at the address listed in 17—subrule 2.3(2), from the department Web site or from organizations designated by the department.

9.3(2) *Submission of forms.* Each applicant shall complete and submit an application for membership to the department at the address in 17—subrule 2.3(2).

9.3(3) *Membership restriction.* Applications shall be approved only when written consent is submitted by both the resident’s advocate/ombudsman and the administrator of the facility if an applicant:

- a. Has an ownership interest in the facility; or
- b. Is employed by the facility or a competing facility; or
- c. Has been employed by the facility within the past three years; or
- d. Is related to an employee, board member, or licensee of the facility; or
- e. Is a public employee involved with the sponsoring or placement of residents in the facility; or
- f. Is an administrator of a long-term care facility; or
- g. Is a professional consultant to the facility.

9.3(4) *Waiver of membership restriction.* When the resident’s advocate/ombudsman or the facility administrator does not approve an application, the membership restriction for relatives in paragraph 9.3(3) “d” may be waived by the director if sufficient evidence can be presented showing that the membership will not cause a conflict of interest.

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

17—9.4(231) Appointment to resident advocate committees.

9.4(1) Notification. Acceptance of an application shall be confirmed by letter within 15 business days of receipt of the application by the director or designee. Each facility shall be notified of final committee appointments.

9.4(2) Orientation. All applicants shall complete the required orientation prior to final appointment and the beginning of volunteer duties.

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

17—9.5(231) Objection to and termination of appointments to resident advocate committees.

9.5(1) Filing an objection. A facility administrator who objects to a particular member's participation on the committee for that facility may file a written objection with the director. The objection shall be investigated as a confidential complaint, and all parties shall be notified of the director's decision.

9.5(2) Reasons for termination. A committee member's appointment may be terminated by the director for any of the following reasons:

- a. Falsification of information on the application form;
- b. Acting as a member prior to appointment;
- c. Attending less than one-half of the meetings convened each year by the resident advocate committee chairperson;
- d. Conviction of an illegal activity;
- e. Breaching confidentiality;
- f. Failure to attend approved training for two consecutive years; and
- g. Actions which are found by the director to violate these rules or the intent of the state long-term care ombudsman program.

9.5(3) Notification of termination. The director shall notify, in writing, the committee chairperson and the facility of the termination of a resident advocate committee member's appointment.

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

17—9.6(231) Request for reconsideration of appointment or termination of appointment.

9.6(1) Request. A request for reconsideration concerning appointment, nonappointment or termination shall be made in writing to the department within 30 days of the written notice of the director's action.

9.6(2) Decision. The director shall consider the request within 30 days of receipt and notify all parties of the decision.

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

17—9.7(231) Resident advocate committee structure and procedures.

9.7(1) Structure. Every committee shall have a chairperson and secretary selected by the membership. The chairperson shall coordinate the activities of the committee. The secretary shall record minutes of each meeting and prepare reports as necessary. The chairperson and secretary shall be elected to a term of not more than three years.

9.7(2) Resident visits. Committee members shall spend at least three hours each month making visits to observe residents at different times of the day and in differing circumstances and shall document the visits.

9.7(3) Meetings. The committee shall meet at least quarterly and on other occasions as required to accomplish its responsibilities. The chairperson shall notify all members of the time and place of each meeting at least two weeks in advance.

a. The administrator and staff of the facility shall not attend committee meetings except upon request of the committee.

b. Confidential information shall not be discussed during meetings if anyone other than committee members is present.

c. Reports of each visit shall be discussed with the committee as appropriate.

d. The secretary shall complete the meeting minutes summary form designated by the department. Copies of the form shall be submitted to the facility administrator and to the office of the resident's advocate/ombudsman within ten business days following the meeting.

e. The forms shall be retained by the facility for a period of at least two years and shall be available to the department of inspections and appeals and the department on aging upon request.

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

17—9.8(231) Duties of the committee. Committee members shall, at a minimum, participate in one training session approved by the department each calendar year. Committee members shall represent and advocate for the rights of residents of the facility. As a part of this advocacy, committee members shall investigate complaints and grievances according to the procedures established in rule 17—9.11(231).

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

17—9.9(231) Committee access and assistance.

9.9(1) Access. The committee shall have access to facilities, persons and records as provided in the Act, Iowa Code section 231.42 and this chapter.

9.9(2) Assistance to the committee. The committee may request information, advice and counsel from the facility administrator or the department. When, in the performance of duties, a committee member contacts anyone on behalf of residents, the committee member shall clearly identify himself or herself and shall clearly state the purpose of and justification for such contact.

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

17—9.10(231) Confidentiality.

9.10(1) Access restriction. Resident advocate committee members shall not have access to the following records unless access is granted by the resident or the resident's responsible party, such as a guardian or conservator, and the resident's advocate/ombudsman:

- a.* Medical, financial or personal records of residents; or
- b.* Records of the social services department of the facility.

9.10(2) Nondisclosure of information. The committee shall not disclose information concerning residents or the operation of a facility in a manner that will identify individuals or the facility, except to the state long-term care ombudsman program or as requested by the department of inspections and appeals in the investigation of a facility.

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

17—9.11(231) Committee response to complaints and grievances. Throughout the investigation of all complaints and grievances, the committee shall maintain objectivity and act as advocates for residents without being adversaries of the facility.

9.11(1) In all investigations, the committee shall:

a. Maintain the dignity and privacy of residents, as shall all other persons involved in a complaint or grievance investigation.

b. Using the procedures appropriate to the source of the complaint, receive and investigate complaints or grievances from an individual or the department regarding the rights and welfare of residents.

c. Seek to resolve the complaint or grievance and, if feasible, prevent unnecessary regulatory action against a facility. However, the committee shall not prevent or dissuade regulatory action when necessary to protect or achieve the rights of residents.

d. Solicit input from the complainant and the resident regarding the choices for action to be pursued by the committee.

9.11(2) Action upon receipt of a complaint or grievance. The committee may contact the facility administrator to discuss the allegations only if doing so does not violate confidentiality.

a. Information that identifies the complainant or resident shall be confidential unless the complainant or resident has given permission to the committee to disclose this information. This permission shall be documented in a committee member's notes.

- b. The investigating committee member shall make at least one unannounced visit to the facility.
 - c. The committee shall, to the extent possible, ascertain the facts of the situation through personal observation of conditions and activities in the facility and by talking with all persons who may have knowledge regarding the matter under investigation.
 - d. If a resolution cannot be reached, the committee may contact the resident's advocate/ombudsman for follow-up action as appropriate.
 - e. Committee members shall keep the complainant informed of progress in the investigation.
- [ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—9.12(231) Complaints referred from the department of inspections and appeals. The following procedures shall apply to complaints received or initiated by the department of inspections and appeals and referred to the department on aging for investigation by a resident advocate committee.

9.12(1) Confidentiality. Information that may identify the complainant or resident shall be confidential.

9.12(2) Notification. Depending on the circumstances in each instance, the state long-term care ombudsman program shall provide adequate verbal information within three days to a member of the appropriate resident advocate committee so that an investigation may proceed. Written notification shall be provided within seven days.

9.12(3) Investigation. Investigation of the complaint or grievance shall be conducted in accordance with rule 17—9.11(231).

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

17—9.13(231) Accountability measures.

9.13(1) The committee shall use a standardized form developed by the department, to be completed by the secretary, to specify issues and concerns identified by residents, the facility's response, and whether the matter has been resolved.

9.13(2) An issue or concern shall be designated as resolved when the committee and the facility agree it has been resolved. If there are unresolved issues and the facility disagrees with the committee's determination regarding the resolution of an issue or concern, the facility may request a review by the resident's advocate/ombudsman by submitting a written request within 20 calendar days of receipt of the form described in this rule.

9.13(3) Upon receipt of a request for review, the resident's advocate/ombudsman shall contact the facility administrator and the chairperson of the resident advocate committee to discuss the request. The resident's advocate/ombudsman has the discretion to:

- a. Uphold the committee's determination,
- b. Designate the issue or concern as resolved, or
- c. Redefine the issue or concern as a means to negotiate a compromise.

9.13(4) The decision of the resident's advocate/ombudsman shall be made within 20 calendar days of the receipt of a request for review. Additional time may be allotted by agreement of the resident advocate committee and the facility administrator.

9.13(5) An aggrieved party has 30 calendar days from the receipt of written notice of the decision of the resident's advocate/ombudsman to request a hearing pursuant to 17 IAC 13.

9.13(6) All appeals and judicial review shall be conducted pursuant to 17 IAC 13.

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

17—9.14(231) Reporting statistics. The office of the resident's advocate/ombudsman shall record the number of issues and concerns listed on the forms submitted by the committees and the number resolved. Each year, the office of the resident's advocate/ombudsman shall calculate the percentage of issues and concerns that are resolved, based on the total number of issues and concerns identified between January 1 and December 31 of the preceding year. Prior to May 1 of each year, the office of the resident's advocate/ombudsman shall report the resolution rate of each facility to the department of human services.

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

17—9.15(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.

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

These rules are intended to implement Iowa Code section 231.44.

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¹ Effective date of Ch 9 delayed by Administrative Rules Review Committee.

CHAPTER 10
SENIOR INTERNSHIP PROGRAM (SIP)
[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] Ch 10]

17—10.1(231) Scope and purpose.

10.1(1) Scope. The senior internship program (SIP) encourages and promotes employment opportunities in both public and private sectors for individuals aged 55 and older. All procedures and rules used to operate this program shall be in accordance with Title V of the Older Americans Act as amended October 17, 2006, and implemented under 20 CFR 641, these rules, and the contractual agreement between the department and the subproject sponsor.

10.1(2) Purpose. The purpose of the senior internship program (SIP) is to promote meaningful employment opportunities for persons aged 55 and older under two different funding sources and differing criteria for eligibility: The first eligibility group receives federal dollars authorized under Title V of the Older Americans Act as amended October 17, 2006 (OAA Amendments), Pub L. No. 06-501, U.S.C. 3056, and implemented under 20 CFR Part 641 (April 9, 2004) to promote part-time, work-based training opportunities in local communities for unemployed, low-income individuals. The second eligibility group is funded by state appropriations and offers the services needed to assist underemployed or unemployed job seekers in such areas as skill assessment, résumé and interview assistance, completion of applications, and job counseling. The goal of both groups is to obtain unsubsidized employment for eligible individuals.

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

17—10.2(231) Definitions. Words and phrases used in this chapter shall be as defined in 17—Chapter 1 unless the context of the rule 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.

“Assessment of job skills” means a process by which the senior internship program coordinator develops a written history of the work experience and related qualities that an individual possesses that would make the individual marketable as an employee.

“Authorized position” means an enrollment opportunity with the Senior Community Services Employment Program (SCSEP), or Title V, allocated by the department on aging during a program year.

“Core services” means labor market information, an initial assessment of skill levels, and job search and placement assistance offered to a job applicant.

“Eligible individual” means a person who is 55 years of age or older who is served by SIP and who meets one of the two eligibility groups’ criteria.

“Equitable distribution” means the ratio of the total Title V authorized positions operated by the department and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

“Host agency” means a public agency, private nonprofit organization, or private sector employer, other than a political party, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, which provides a work site and supervision for a participant.

“Individual employment plan” or *“IEP”* means the plan developed in partnership with a participant to reflect the participant’s needs as indicated by the assessment, as well as the expressed interests and desires of the participant.

“Low income” (SIP) means any person or persons whose actual individual or family income is not more than 125 percent of the poverty guidelines issued annually by the U.S. Department of Labor in accordance with Section 507(2) of the Older Americans Act.

“National sponsor” means Experience Works, AARP, Senior Services of America, Inc., or any other national organization which is allocated positions by the U.S. Department of Labor.

“One-stop delivery system” means a workforce system connecting employment, education, and training services into a coherent network of resources at the local, state, and national levels.

“*Physical examination*” means a medical examination performed by a physician or a medical professional under the supervision of a physician to determine if a participant is capable of fulfilling the duties of a work assignment.

“*Physical examination waiver*” means a signed statement by a participant or an applicant which verifies that the participant or applicant was offered the opportunity to take a physical examination but refused.

“*Quarterly progress report*” means the report on participant activity and characteristics submitted to the U.S. Department of Labor from information gathered from the subproject sponsors at the end of every three-month period during the fiscal year.

“*Senior Community Services Employment Program*” or “*SCSEP*” means the U.S. Department of Labor’s commonly referred to name for the Title V program.

“*Senior internship program*” or “*SIP*” means the program established under Iowa Code section 231.52.

“*Senior internship program coordinator*” means a person employed by the subproject sponsor whose responsibility is to develop jobs, advocate for the employment of eligible individuals, and provide employment services for eligible individuals, including Title V participants.

“*Subproject sponsor*” means a public or private nonprofit organization that provides program services on behalf of the grantee. Subproject sponsors are required to follow all applicable laws, rules, regulations and policy advisories.

“*Temporary position*” means the authorized positions which exceed the number allocated by the U.S. Department of Labor.

“*Termination*” means a separation from the program.

“*Title V*” means that portion of the federal Older Americans Act with that designation.

“*Unsubsidized employment*” means a position where wages, fringe benefits and other expenses for a terminated participant are not paid with SIP funds.

“*Workforce Investment Act of 1998*” means the law providing the framework for a national workforce preparation and employment system designed to meet both the needs of the nation’s businesses and the needs of job seekers and those who want to further their careers.

“*Work site*” means the actual location where participants perform their duties.

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

17—10.3(231) Eligibility for service.

10.3(1) To be eligible for participation for core services in the SIP, an applicant shall:

- a. Be aged 55 or older;
- b. Be a current resident of the state of Iowa; and
- c. Be unemployed or underemployed at the time of application.

10.3(2) To be eligible for the SIP Title V subsidized employment program, participants shall meet the following criteria:

- a. Be aged 55 or older;
- b. Be unemployed; and
- c. Meet income guidelines established annually by the U.S. Department of Labor relating to Title V eligibility.

10.3(3) Priority eligibility. A person who is eligible for Title V and who has priority status as defined in paragraph 10.5(2)“c” will be given first consideration for a Title V position.

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

17—10.4(231) Funding.

10.4(1) SIP shall be funded by:

- a. Title V of the Older Americans Act as amended October 17, 2006.
- b. SIP state appropriations.
- c. Other nonfederal sources.

10.4(2) Title V funds and state funds shall be allotted among the SIP subproject sponsors according to the number of Title V slots designated for contracted projects.

10.4(3) If two or more subproject sponsors combine resources, the subproject sponsors shall be treated as one agency for funding purposes.

10.4(4) Title V funds and SIP state funds shall not be carried over.

10.4(5) Federal Title V funds and SIP state appropriations shall be allocated through a contractual agreement between the department and the subproject sponsor.

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

17—10.5(231) Program requirements.

10.5(1) *Participating agencies.* Public, private and not-for-profit organizations will be contacted to respond to a request for proposal (RFP). Agencies will be selected to operate SIP through the request for proposal process, and those selected will become subproject sponsors as defined in paragraph 10.6(2) "a."

10.5(2) *Subproject sponsor responsibilities.* Sponsor responsibilities for SIP shall include the following:

a. Implementation of recruitment methods that ensure that the maximum number of eligible individuals have access to and participate in employment opportunities and the Title V program; and

b. Subproject sponsors shall designate a member of their staff as a senior internship program coordinator to ensure program performance; and

c. For persons identified eligible for the Title V portion of the program, all procedures and rules shall be in accordance with Title V of the Older Americans Act as amended October 17, 2006, and 20 CFR 641. For Title V participants, subproject sponsors shall:

(1) Minimize the number of vacant part-time positions;

(2) List all vacant positions with the local workforce development center;

(3) Enroll individuals in the Title V program according to the priorities established by the U.S. Department of Labor;

(4) Ensure that recruitment efforts are targeted toward minority, limited English-speaking eligible individuals and individuals with the greatest economic need;

(5) Meet the state performance measures established in the request for proposal:

1. The first year a subproject sponsor fails to meet required performance measures, technical assistance will be provided and a corrective action plan will be required;

2. After the second consecutive year of failure to meet required performance measures, the funds and Title V positions will be reallocated;

(6) Develop job opportunities for job-ready participants by the following methods:

1. Coordinate with the local workforce development center in registering and placing older workers;

2. Contact and educate private employers concerning the resources older workers bring to the labor force and assist the employer in developing job sharing, job restructuring and other techniques to increase opportunities for older workers;

3. Encourage host agencies to employ the participant in their regular workforce as originally agreed; and

4. Coordinate with other local employment and training programs in identifying jobs or training opportunities for participants;

(7) Follow up on each participant twice during the first 90 days of unsubsidized employment:

1. Follow-up shall occur at 30 and 90 days with the results documented in participants' individual employment plans; and

2. Participants found to be unemployed shall be considered for reenrollment;

(8) Assist participants in accessing approved training sessions;

(9) Provide participants and host agencies with orientation to program purposes, goals and requirements;

(10) Provide access to supportive services where needed by a participant for participation in the program;

(11) Provide written job descriptions to participants immediately after entry into the program;

(12) Provide each participant with a copy of the host agency grievance procedures and the subproject sponsor's grievance procedures;

(13) Complete an individual employment plan (IEP) for each Title V participant based on an assessment conducted by the subproject sponsor and updated semiannually with the participant to use as an ongoing development plan;

(14) Ensure outreach to those in greatest economic need, including minorities and limited English-speaking individuals;

(15) Maintain the authorized enrollment level and provide for temporary positions unless approval has been received from the department to operate at a decreased level;

(16) Perform evaluations of each host agency at least annually;

(17) Coordinate and cooperate with national sponsors in the establishment of authorized positions in each county in accordance with equitable distribution requirements as appropriate;

(18) Maintain records and reports required by the U.S. Department of Labor and the department on aging;

(19) Comply with maintenance of effort (MOE) requirements; and

(20) Provide or arrange through third parties a percentage of the cost of the project as designated in the subproject sponsor contractual agreement:

1. Subproject sponsor contributions may be cash or in-kind or a combination of both.

2. Projects may generate a fee for service or charge a host agency fee in accordance with current U.S. Department of Labor administrative regulations and the terms and conditions of the grant award. Such program income shall be added to the federal funds committed to the project and shall be used to further eligible project or program objectives.

10.5(3) Program coordination with one-stop delivery system.

a. Subproject sponsors shall coordinate the SIP with the one-stop delivery system as established under Section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)) to ensure opportunities for unsubsidized employment.

b. Subproject sponsors shall enter into a memorandum of understanding with the local workforce investment board in accordance with Section 121(c) of the Act.

c. Subproject sponsors shall provide a copy of the current memorandum of understanding to the department.

10.5(4) Department responsibilities. The department shall:

a. Issue a request for proposal for application for senior internship funds;

b. Monitor subproject sponsors at least annually as required in subrule 10.7(2);

c. Provide training and technical assistance to subproject sponsors;

d. Provide training workshops for SIP coordinators and other subproject sponsor employment staff, subject to availability of funding;

e. Coordinate the allocation of authorized positions with national sponsors according to equitable distribution requirements;

f. Report to the U.S. Department of Labor annually on the status of equitable distribution efforts;

g. Submit to the governor a state senior employment services coordination plan consistent with the provisions of Title V;

h. Report to the U.S. Department of Labor as required by Title V of the federal Older Americans Act;

i. Coordinate the SIP with the department of workforce development, the department of education, the department of economic development, and other agencies which provide employment services to older Iowans; and

j. Maintain records as required by 17—subrule 5.13(1).

10.5(5) Complaint procedures. The department shall resolve complaints of applicants, participants, subproject sponsors and host agencies by following these procedures:

a. Any adverse action taken against a participant shall be issued to the participant in writing, stating the reasons for the determination, the participant's right to appeal, and the procedures to follow in the appeal process.

b. Subproject sponsors shall develop complaint procedures and an appeal process to resolve any issue arising between the sponsor and a participant or applicant. Procedures shall provide the following as a minimum:

(1) An opportunity for an informal conference and immediate resolution at the lowest level possible;

(2) Formal procedures for filing the complaint in writing for review by the subproject sponsor or the designee of the subproject sponsor;

(3) The right of the participant to appeal the subproject sponsor's final decision in writing to the department within 15 days of the date of the decision; and

(4) All lower-level appeals provided by the subproject sponsor must be exhausted before appealing to the department.

c. The department shall determine whether the complaint is of a nature to initiate an informal review or a contested case proceeding as set forth in rule 17—2.9(231) and 17—Chapter 13.

d. Complaints alleging a violation of law may be appealed to the U.S. Department of Labor if not resolved by the host agency, subproject sponsor or the department within 60 days of the original filing.

e. Complaints alleging discrimination on the basis of race, color, sex, national origin, handicap or age which are not resolved by the host agency, the subproject sponsor or the department within 60 days may be filed with the Director, Office of Civil Rights, U.S. Department of Labor, Washington, DC 20210. These complaints will be handled in accordance with the procedures in 29 CFR Parts 31 and 32 (July 1, 1990).

f. Complaints not alleging discrimination or violation of statute may be appealed to the department pursuant to paragraph 10.5(5) "c" but are not subject to appeal to the U.S. Department of Labor.

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

17—10.6(231) Funding criteria.

10.6(1) *Application.* Application for SIP funds shall be made by proposals submitted to the department.

10.6(2) *Award.* The department shall select subproject sponsors in accordance with the following criteria:

a. The subproject sponsor shall be a public, private or nonprofit organization with proven management and administrative capabilities to provide employment and training services to older workers;

b. The department may choose among competing subproject sponsors based upon the department's determination of the sponsor's ability to comply with requirements set forth in a request for proposal;

c. Factors which may be considered include evaluations of the existing management and administrative capabilities of the organization;

d. Upon review and approval of the application by the department, the applicant shall be notified of grant approval through a notification of grant award;

e. Formal procedures for selecting a subproject sponsor will include the rebidding of a contract for services every five years. Contracts will be awarded following the request for proposal competition and may be renewed for a one-year budget period on a noncompetitive basis. Awards will be subject to availability of funds, satisfactory progress of the project, and a determination that continued funding is in the best interest of the department and the project; and

f. At the the department's discretion, approved positions and funds may be reallocated from one subproject sponsor to another during the program year to further achieve the required performance levels.

10.6(3) *Denial of award.* An application for SIP funding by a subproject sponsor may be denied if the subproject sponsor does not perform according to the guidelines of these rules or fails to meet the requirements of the Older Americans Act as amended October 17, 2006.

10.6(4) *Appeal.* An appeal to a proposed decision made pursuant to these rules may be made according to the procedures contained in Iowa Code chapter 17A and 17—Chapter 13 and must be filed within 30 days of the issuance of the proposed decision.

10.6(5) Reallocation. Reallocation of Title V funds may be made by the director according to the criteria defined in 17—paragraph 5.8(1) “b.”
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—10.7(231) Monitoring and record keeping.

10.7(1) Subproject sponsor duties. The subproject sponsor shall:

a. Submit performance, fiscal and program reports to the department on aging in accordance with procedures established by the department;

b. Maintain files on each Title V participant containing the following: Immigration and Naturalization Service I-9 (Proof of Citizenship), application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, physical examination report (or properly executed waiver), individual employment plan (IEP), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and

c. Maintain files for each host agency or work site, which shall include:

- (1) The host agency or work site agreement containing relevant program requirements;
- (2) Evidence that the host agency or work site participant supervisor has received orientation; and
- (3) Host agency or work site evaluation reports.

10.7(2) Department duties. The department shall:

a. Conduct desk monitoring of the SIP. The department may conduct on-site monitoring if circumstances require an inspection of subproject sponsor records;

b. Conduct an on-site assessment of each SIP subproject at least annually. The subproject sponsor shall be informed in writing of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department and shall be open to inspection by authorized state and federal officials;

c. Maintain files on Title V participants that include applications, recertifications, physical examination records, physical examination waivers, and termination forms (if applicable); and

d. Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

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

17—10.8(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 5/20/82, Notice 3/17/82—published 6/9/82, effective 7/14/82]

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

¹ Effective date of Chapter 10 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 11
WAIVERS OR VARIANCES 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 or variance*” 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. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

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

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 or variance. 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]

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.

[Filed 3/26/04, Notice 2/4/04—published 4/14/04, effective 5/19/04]

[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 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]

17—12.1(231) Authority. This chapter implements the:

1. Prevention and awareness of elder abuse, neglect, or exploitation program as provided in Iowa Code chapter 231 and in accordance with the federal Older Americans Act; and

2. Mandatory reporter training as provided in Iowa Code chapter 235B.

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

17—12.2(231) Purpose. This chapter establishes methods to increase the awareness of elder abuse, neglect, or exploitation among providers, health care professionals, county attorneys, law enforcement, community change agents and the general public and establishes criteria for mandatory reporter training as required in Iowa Code chapter 235B.

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

17—12.3(231) Elder Abuse, neglect, or exploitation prevention and public awareness. In accordance with Iowa Code chapter 231 and Title VII of the Older Americans Act, the department shall develop and enhance programs for the prevention of elder abuse, neglect and exploitation, including but not limited to public awareness and education.

12.3(1) Definitions. Words and phrases used in this rule shall be as defined in 17 IAC 1 unless the context of the rule indicates otherwise. The following definitions apply to this rule:

“Exploitation” (OAA) means 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.

“Physical harm” (OAA) means bodily injury, impairment, or disease.

12.3(2) Funding. Funding is provided by Title VII of the federal Act as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders.

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

17—12.4(231,235B) Dependent adult abuse mandatory reporter training. Words and phrases used in this rule shall be as defined in Iowa Code chapter 235B.

12.4(1) In accordance with Iowa Code section 235B.16(2), the department shall develop and maintain a dependent adult abuse mandatory reporter training manual. The curriculum shall comply with the specifications of the department of public health’s abuse education review panel as provided in 641 IAC 93.

12.4(2) The department shall instruct and certify trainers to deliver the IDA dependent adult abuse mandatory reporter training approved curriculum.

12.4(3) The instruction shall include, but is not limited to, laws, rules and regulations relating to all forms of dependent adult abuse and reporting requirements.

12.4(4) Prior to an individual’s conducting mandatory reporter training with the IDA curriculum, that person must become a certified trainer by completing the required training from the IDA.

12.4(5) The trainer’s certification shall be valid for three years from the date of issuance and must be renewed by retaking the instruction.

12.4(6) IDA may revoke a trainer’s certification for noncompliance with the training requirements. Such a revocation would occur only after a written warning.

12.4(7) It is the responsibility of certified trainers to keep the department notified of changes in contact information, such as address, E-mail, and telephone number. Certified trainers are also responsible for regularly checking the department’s Web site for updates to the curriculum. Updates shall be posted on the department’s Web site no later than July 1.

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

These rules are intended to implement Iowa Code chapter 231 and section 235B.16 and the 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]

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 INITIATIVE, EMERGENCY SHELTER AND
SUPPORT SERVICES PROJECTS

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 15]

17—15.1(231) Authority. The elder abuse initiative, emergency shelter and support services projects are authorized by Iowa Code section 231.56A.

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

17—15.2(231) Purpose. The purpose of these projects is to focus on the prevention, intervention, detection and reporting of elder abuse, neglect and exploitation by presenting older individuals with options to enhance their lifestyle choices.

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

17—15.3(231) Definitions. Words and phrases used in this chapter shall be as defined in 17 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

“Elder abuse initiative” or *“EAI”* means a service delivery system created through partnerships with the AAA, the department of human services, law enforcement, county attorneys, care providers and other stakeholders in the community for emergency shelter and support services.

“Exploitation” (OAA) means 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.

“Physical harm” (OAA) means bodily injury, impairment, or disease.

“Request for proposal” or *“RFP”* means a document issued by the department, in accordance with Iowa Code section 8.47 and 11 IAC 105, 106 and 107, detailing the process for submitting an application for designation as a new or expanded EAI project and the criteria for qualification.

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

17—15.4(231,249H) Funding. Funding is provided by the senior living trust fund created in Iowa Code chapter 249H as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of older individuals. Requirements of Iowa Code section 231.56A(5) and (6) apply to funds awarded for EAI projects.

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

17—15.5(231) Eligibility.

15.5(1) Only applicants that meet the requirements of Iowa Code section 231.56A may apply for designation as EAI projects.

15.5(2) A qualified AAA may apply to the department for a new EAI for one or more counties within the AAA’s boundaries with funding, or may apply to expand an existing EAI into one or more counties within the AAA boundaries with or without funding as specified in the RFP issued by the department.

15.5(3) Project activities including, but not limited to, public education and the dissemination of information may supplement prior activities.

15.5(4) AAA shall implement the activities in coordination with local groups, individuals and agencies, such as the department of human services’ multidisciplinary committee.

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

17—15.6(231) Application process.

15.6(1) In a fiscal year in which funding is available, the department shall release, by July 1, an RFP detailing the application requirements, type of EAI requested and the criteria for qualification for new projects or expansion counties. The criteria shall include compliance with Iowa Code section 231.56A(3). The EAI designation and funding are awarded based on these criteria and those established in the RFP.

15.6(2) AAA that seek to initiate a new EAI or expand their current EAI service beyond that designated in the current contract may make application to the department as specified in the RFP.

15.6(3) All application materials shall be reviewed by the department and, if appropriate, a recommendation for approval made to the commission based on the completeness of the application and the apparent ability of the applicant to meet the criteria established in the Iowa Code and the RFP.

15.6(4) Upon commission approval of the department recommendation, the successful applicant shall enter into a contract with the department which delineates the responsibilities of each party.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—15.7(231) Reporting and monitoring. Monitoring and submission of fiscal and program reports shall be in accordance with the terms of the contract as well as the requirements of this chapter.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 231 and 249H.

[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]

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

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.

[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

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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]

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

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[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
CASE MANAGEMENT PROGRAM FOR FRAIL ELDER

[Prior to 1/27/10, see Elder Affairs Department[321] Ch 21]

17—21.1(231) Authority. This chapter implements the case management program for frail elders (CMPFE) as provided in Iowa Code section 231.23A.

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

17—21.2(231) Purpose. This chapter sets out consumer eligibility, covered services, program administration and program standards to assist consumers in making appropriate use of the long-term care continuum which ranges from care in the home to institutionalization.

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

17—21.3(231) Definitions. Words and phrases used in this chapter are as defined in 17 IAC 1 unless the context indicates otherwise. The following definition also applies to this chapter:

“*Case management program for frail elders*” or “*CMPFE*” means case management activities that assist an elder in gaining access to needed medical, social, and other appropriate services. Case management services are provided at the direction of the elder and include:

1. A comprehensive assessment of the individual’s needs;
2. Development and implementation of a service plan to meet those needs;
3. Coordination and monitoring of service delivery;
4. Evaluation of outcomes;
5. Periodic reassessment and revision of the service plan as needed; and
6. Ongoing advocacy on behalf of the elder.

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

17—21.4(231) Program administration.

21.4(1) Each AAA shall use the forms and data processing software systems specified by the department for all program requirements.

21.4(2) The department shall have complete access to all case management records maintained by the AAA.

21.4(3) Consumer-specific case management records shall be maintained by the department and the AAA as confidential information.

21.4(4) Appeals of decisions by the AAA shall follow the procedures given in 17—2.9(231).

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

17—21.5(231) Eligibility for CMPFE services. A person meeting all the following criteria shall be eligible for CMPFE services:

1. Resides in Iowa;
2. Is aged 60 or older;
3. Needs two or more services;
4. Does not live in, or is within 30 days of discharge from, a nursing facility as defined in Iowa Code section 135C.1(13); and
5. Is in need of case management services based on a standardized assessment of needs.

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

17—21.6(231) Admission into the case management program. The date of admission into the case management program for consumers shall be the date of the assessment.

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

17—21.7(231) Discharge from CMPFE.

21.7(1) A consumer shall be discharged from CMPFE when the AAA has determined that any one of the following situations has occurred:

- a. The consumer dies;
- b. The consumer moves out of state;

- c. The consumer moves into a nursing facility and is expected to stay in the facility for more than 90 days;
- d. The consumer or the consumer's legal representative requests termination from CMPFE;
- e. The consumer is unwilling or unable to adhere to the agreed-upon service plan;
- f. The consumer or the consumer's legal representative refuses to provide access to information necessary for the development or implementation of the service plan;
- g. The consumer's needs cannot be met in a way that ensures the consumer's health, safety and welfare; or
- h. The consumer's goals are achieved and the consumer no longer needs case management.

21.7(2) The CMPFE coordinator shall approve all recommendations for discharge prior to initiation of discharge action.

21.7(3) If the discharge is due to the circumstances given in subrule 21.7(1), paragraphs "e" through "h," the case manager shall provide a written notice to the consumer or the consumer's legal representative stating the reasons for the discharge from case management and include the process for appealing the decision.

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

17—21.8(231) Organizational requirements.

21.8(1) Each AAA shall develop and adhere to written procedures regarding the prevention and management of conflicts of interest. Such procedures shall at a minimum include:

- a. The process for delegating case management responsibilities to a case manager;
- b. Identification of where conflicts do, or could, exist;
- c. Procedures to eliminate or minimize those conflicts;
- d. A process for conflict resolution with the consumer's best interest as the priority.

21.8(2) Each AAA shall have a designated CMPFE coordinator responsible for administering and monitoring the program at the local level.

21.8(3) Each AAA shall ensure that all CMPFE staff complete mandatory reporter training requirements in accordance with Iowa Code chapter 235B.

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

17—21.9(231) Personnel qualifications. After July 1, 2006, the following are minimum training, education and work history requirements for AAA and contract personnel in the CMPFE program:

21.9(1) Case manager qualifications for employment.

a. The case manager shall hold a bachelor's degree in the human services field. The case manager may substitute up to two years' full-time equivalent work experience in a human services field involving direct contact with people in overcoming social, economic, psychological or health problems for two years of the educational requirement; or

b. The case manager shall be currently licensed as a registered nurse in Iowa.

21.9(2) CMPFE coordinator qualifications for employment.

a. The CMPFE coordinator shall hold a bachelor's degree in the human services field and have one year of full-time equivalent work experience in a human services field involving direct contact with people in overcoming social, economic, psychological or health problems; or

b. The CMPFE coordinator shall be a licensed registered nurse and have one year of full-time equivalent experience in a health care field involving direct contact with people in overcoming social, economic, psychological or health problems.

21.9(3) Training required during employment.

a. The case manager shall attend case management orientation required by the department within six months of beginning employment with an AAA.

b. All case managers shall:

(1) Receive formal training from the AAA CMPFE coordinator in completion of the CMPFE assessment tools; and

(2) Attend six hours of department-approved long-term care or aging-related training per year.

c. All CMPFE coordinators shall attend case management coordinator training provided by the department within three months of beginning employment with an AAA.

d. All CMPFE coordinators shall:

(1) Receive formal training from the department's CMPFE program manager in completion of the CMPFE assessment tools; and

(2) Attend six hours of department-approved long-term care or aging-related training per year.

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

17—21.10(231) Covered services. Case management services may vary by consumer but shall include comprehensive screening and assessment of the consumer's needs, development and implementation of a written service plan, ongoing monitoring to ensure that services specified in the plan are being provided, and ongoing advocacy on behalf of the consumer.

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

17—21.11(231) Assessment of consumer needs. The assessment of consumer needs shall be conducted in person and shall, at a minimum, consist of:

21.11(1) Obtaining the consumer's signature on a standard release of information form which documents the consumer's permission to share information for assessment and case management.

21.11(2) Conducting a comprehensive assessment using the assessment tool designated by the department.

21.11(3) Contacting sources for additional information to complete the assessment tool as needed.

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

17—21.12(231) Service plan development.

21.12(1) Upon completion of the comprehensive assessment during the home visit, the case manager shall develop an initial service plan with the consumer which, at a minimum, shall take into consideration and address information identified during the assessment of the consumer's service needs, functioning level, strengths and available family or informal service providers and community resources. The case manager shall provide the consumer with a list of known service providers available in the consumer's community.

21.12(2) Following the initial plan, a more thorough, ongoing plan shall be developed. The completed written service plan shall include at a minimum:

a. A description of the level of care;

b. Goals to be obtained by the consumer;

c. Expected outcomes;

d. Services to be provided, providers of those services and the frequency and cost of services, if available; and

e. Exit and contingency planning.

21.12(3) The case manager shall explain to the consumer how to access assistance in situations of suspected dependent adult abuse.

21.12(4) The consumer or the consumer's legal representative and the case manager shall sign the service plan.

21.12(5) Each AAA shall have a written process in place to ensure that service plans meet all applicable standards.

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

17—21.13(231) Monitoring. In order to ensure consumer health, safety and welfare, the case manager shall:

1. Monitor the provision of services on an ongoing basis;

2. Hold an individual face-to-face meeting with the consumer at least quarterly to review the service plan and services provided; and

3. Document in the consumer's case files all contacts and case management activities undertaken on behalf of the consumer.

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

17—21.14(231) Reassessment.

21.14(1) A reassessment shall be conducted whenever there is a significant change in the consumer's status or at least every 12 months. The reassessment shall include review and modification of the information contained in the most recent assessment.

21.14(2) The service plan shall be revised to reflect changes, deletions or additions to services based on any changes in the consumer's needs.

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

17—21.15(231) 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 8489B, IAB 1/27/10, effective 1/7/10]

17—21.16(231) Contracting for case management services.

21.16(1) AAA may choose to contract with local provider agencies for delivery of case management services. If the AAA contracts for case management services, the AAA shall have written procedures established under 17—6.9(231) that create a framework for ongoing review of how the contract agency is meeting program standards and the terms of the contract. The department shall audit AAA procedures to ensure that the area agency's monitoring is sufficient and timely.

21.16(2) Provider agencies shall meet all program organization and personnel requirements of this chapter.

21.16(3) The following requirements shall be in place to ensure that service plan development is conducted in the best interest of the consumer:

a. When assigning a consumer to a case management entity under contract, the AAA shall make all reasonable efforts to assign the consumer to an agency not currently providing direct services to that particular consumer in an effort to avoid potential conflicts of interest.

b. If the case manager is employed by the same agency that provides other direct services to the consumer, the case manager shall discuss with the consumer or the consumer's legal representative the issue of potential conflict of interest. The case manager shall inform the consumer that the consumer has free choice of providers and that selection of any particular provider will not influence the services provided by the case manager. The conversation and the consumer's response shall be documented in the case notes.

c. When explaining provider options, the case manager shall include, at a minimum, the name, address, and telephone number of the potential provider agencies; the types of services provided; and the frequency and units of service the consumer would be able to receive if there is a cost differential between providers of the same service.

21.16(4) The AAA must have a written plan completed to monitor adherence by case management providers to the standards in subrule 21.16(3). Contracts must contain provisions that require case management providers to have written conflict of interest policies that include but are not limited to:

a. Specific procedures to identify where conflicts could exist;

b. Procedures to eliminate or minimize the conflicts upon identification of situations that might indicate that a conflict of interest could exist;

c. Steps that must be taken to resolve the issue when a conflict of interest arises or a complaint of conflict of interest is received; and

d. Written documentation or follow-up letters that show that the outcome was satisfactory to all parties involved.

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

17—21.17(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 2005 Iowa Acts, chapter 167, section 14, and Iowa Code section 231.23A.

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[Filed 6/12/08, Notice 3/26/08—published 7/2/08, effective 8/6/08]

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

CHAPTER 22
OFFICE OF SUBSTITUTE DECISION MAKER
[Prior to 1/27/10, see Elder Affairs Department[321] Ch 22]

17—22.1(231E,633) Purpose. This chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.2(231E,633) 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:

“*Active*” means assuming the role of attorney-in-fact upon the triggering event specified in a power of attorney document.

“*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 state 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 substitute decision makers to perform substitute decision-making 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 substitute decision maker.

“*Consumer*” as used in this chapter means any individual in need of substitute decision-making 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 or a consumer’s estate for substitute decision-making services or a one-time case-opening fee for establishment of a case.

“*Fiduciary*” means the person or entity appointed as the consumer’s substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney-in-fact or trustee of any trust.

“*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.

“*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 substitute decision maker.

“*Record*” means any information obtained by the state or local office in the performance of its duties.

“*Substitute decision maker*” or “*SDM*” means a person providing substitute decision-making services pursuant to Iowa Code chapter 231E.

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

17—22.3(231E,633) Substitute decision maker qualifications. All SDMs shall have graduated from an accredited four-year college or university and shall be certified by the National Guardianship Association within 12 months of assuming duties as an SDM. This certification shall be kept current while the person is serving as an SDM.

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

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 the SDM when serving as an SDM. Subsequent to appointment to serve a consumer, the SDM 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]

17—22.5(231E,633) Staffing ratio. SDMs shall be responsible for no more than ten 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.

22.5(1) In its sole discretion, if the state office determines that due to the complexity of current cases SDMs 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, the SDM 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]

17—22.6(231E,633) Conflict of interest—state office. A conflict of interest arises when the SDM 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 an SDM, all reasonable efforts shall be made to avoid an actual conflict of interest or the appearance of a conflict of interest.

22.6(1) The assigned SDM shall not:

- a. Provide direct services to the consumer receiving substitute decision-making services;
- b. Have an affiliation with or financial interest in the consumer’s estate;
- c. Employ friends or family to provide services for a fee; or
- d. Solicit or accept incentives from service providers.

22.6(2) The SDM shall be independent from all service providers, thus ensuring that the SDM 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]

17—22.7(231E,633) Consumers 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 consumer 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 willing and responsible fiduciary to serve as an SDM;
- d. Is capable of benefiting from the services of an SDM;
- e. Receipt of SDM services is in the best interest of the consumer; and
- f. No alternative SDM resources are available.

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]

17—22.8(231E,633) Application and intake process—guardianship, conservatorship, representative payee and personal representative.

22.8(1) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, 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 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 consumer.

22.8(2) The state office shall make a determination regarding eligibility of the consumer 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]

17—22.9(231E,633) Application and intake process—power of attorney.

22.9(1) Any power of attorney that names the state office as attorney-in-fact is not effective unless the state office consents to such appointment.

22.9(2) Any person may request an application for services. Applications are available through the state office. Completed applications shall be submitted to the Office of Substitute Decision Maker, 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 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 consumer.

22.9(3) The state office shall make a determination regarding eligibility of the consumer and acceptance or denial of the case based on a review of the completed application.

22.9(4) 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.

22.9(5) 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]

17—22.10(231E,633) Case records.

22.10(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 SDM, copies of receipts for all expenditures made by the SDM 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 SDM received court-authorized reimbursement directly from the consumer's estate; and

d. Other information as required by the state office.

22.10(2) All case records maintained by the SDM shall be confidential as provided in Iowa Code section 231E.4(6)“g.”
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—22.11(231E,633) Confidentiality. Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by SDMs in the course of their duties.

22.11(1) Records or information obtained for use by an SDM 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 office 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.

22.11(2) In its sole discretion, the state 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.

22.11(3) Information may be redacted so that personally identifiable information is kept confidential.

22.11(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.

22.11(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.

22.11(6) The state office may enter into contracts or agreements with public or private entities in order to carry out the state office's official duties. Information necessary to carry out these duties may be shared with these entities. The state 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 office's behalf if the state office obtains satisfactory assurance that the entity will appropriately safeguard the information.

22.11(7) Release for judicial and administrative proceedings.

a. Information shall be released to the court as required by law.

b. The state 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 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 office is prohibited from releasing, the state 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.

22.11(8) Information concerning suspected fraud or misrepresentation in order to obtain SDM services or assistance may be disclosed to law enforcement authorities.

22.11(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 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.

22.11(10) After the state office receives a request for access to a confidential record, and before the state office releases such a record, the state 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]

17—22.12(231E,633) Termination or limitation. Either an SDM or the state office may seek the termination or limitation of an SDM's duties under circumstances including but not limited to the following:

1. The SDM's services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid substitute decision maker;
3. A conflict of interest or the appearance of a conflict of interest arises;
4. The state office lacks adequate staff or financial resources;
5. The consumer moves outside the service area;
6. The state office is no longer the last resort for assistance;
7. The SDM 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]

17—22.13(231E,633) Service fees.

22.13(1) The state SDM and local SDM shall be entitled to reasonable compensation for their substitute decision-making 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—22.14(231E,633). The state office may collect a fee from the estate of a deceased consumer.

22.13(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.

22.13(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 SDM's appointment shall be assessed a one-time case-opening fee for establishment of the case by the state 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 SDM for the same consumer which involves similar powers and duties.

22.13(4) Monthly fees.

a. A monthly fee for SDM 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 an SDM is appointed to guardianship, conservatorship, or representative payee duties.

b. Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney-in-fact. The state office shall evaluate a consumer's estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.

c. 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.

22.13(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 SDMs for actual, necessary and extraordinary expenses and services.

22.13(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.

22.13(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.

22.13(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.

22.13(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.

22.13(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]

17—22.14(231E,633) Fee schedule. The following fees are applicable to services provided by an SDM unless reduced or waived pursuant to paragraph 22.13(1) "b."

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$ 60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters.	
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
Personal representative	As determined by Iowa Code section 633.197
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]

17—22.15(231E,633) Denial of services—appeal. An appeal from a consumer regarding denial of services shall be made pursuant to 17 IAC 13.

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

17—22.16(231E,633) Contesting the actions of a guardian or conservator.

22.16(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.

22.16(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.

22.16(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 IAC 13.

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

17—22.17(231E,633) Contesting the actions of an attorney-in-fact.

22.17(1) Consumers who wish to contest the actions of an attorney-in-fact may express their concerns to the state office in writing or verbally.

22.17(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 attorney-in-fact. The state office shall notify the consumer both verbally and in writing.

22.17(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 IAC 13.

22.17(4) The consumer shall be informed by the attorney-in-fact that the consumer always has the right to revoke the power of attorney or to a change of attorney-in-fact.

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

17—22.18(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]

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]

CHAPTER 23

REPRESENTATIVE PAYEE PROGRAM (RPP) AND BILL PAYER PROGRAM (BPP)

Rescinded IAB 4/14/04, effective 5/19/04

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

FEEES 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]

17—28.1(231,249H) Purpose. The purpose of the Iowa senior living program, home- and community-based services for seniors, is to create a balanced, comprehensive and affordable long-term care system that is consumer-directed, provides a balance between institutional and noninstitutional services and contributes to the quality of the lives of Iowans.

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

17—28.2(231,249H) Use of funds. Funds appropriated from the senior living trust fund for home-and community-based services for seniors shall be used for activities related to the design, maintenance, or expansion of home- and community-based services for low- and moderate-income seniors including, but not limited to, adult day, personal care, respite, homemaker, chore, and transportation services which promote the independence of seniors and delay the use of institutional care by seniors with low and moderate incomes.

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

17—28.3(231,249H) Definitions. Words and phrases as used in this chapter are as defined in 17 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

“Client participation” means a payment system with an established fee or cost that allows:

1. A senior with low income to receive services for a voluntary contribution toward the cost of the service;
2. A senior with moderate income to receive services at less than the full service delivery cost; and
3. A senior with above moderate income to purchase services at full cost.

“Contract” means the purchase of units of services on behalf of an aggregate clientele.

“Direct service” means a service to a client that is administered by the area agency on aging and provided by employees of the area agency on aging.

“Grant” means the use of funds to underwrite an operation to support the existence of a specific service provider.

“Income” means wages, salaries, business income, social security benefits, veteran’s administration benefits, disability payments, retirement or pension plan income, annuity income, interest income, supplemental security income, welfare payments, and other cash income.

“Long-term care services” means those services specified under the medical assistance home- and community-based services waiver for the elderly or the National Aging Program Information System (NAPIS), which are designed to directly promote the independence of seniors and to delay the use of institutional care by seniors with low and moderate incomes.

“Low income” means:

1. For purposes of determining client eligibility for financial assistance under Iowa Code section 249H.7, household income of less than 300 percent of SSI;
2. For purposes of funding distribution under Iowa Code chapter 249H, household income at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

“Medical assistance program” means the financial assistance programs established in cooperation between the state of Iowa and the Centers for Medicare and Medicaid Services (CMS) under the Medicaid state plan for lower-income Iowans with health and social needs.

“Moderate income” means income that is equal to or greater than 300 percent of SSI and less than 300 percent of the federal poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

“Provider” means an individual(s), agency(ies), public and private for-profit and not-for-profit organization(s) or other entity(ies) delivering long-term care services funded under these rules.

“*Senior*” or “*elder*” means an individual who is 60 years of age or older.

“*Senior living program*” means the senior living program created in Iowa Code chapter 249H to provide for long-term care alternative services.

“*Senior living trust fund(s)*” or “*SLTF*” means the funding mechanism established in Iowa Code chapter 249H.

“*Subcontractor of the area agencies on aging*” means a provider receiving funds by contract with an area agency on aging.

“*Supplemental security income (SSI)*” means the income level defined each year by the Social Security Administration (SSA) for the nationwide federal assistance program administered by SSA, which guarantees the defined minimum level of income for needy aged, blind, or disabled individuals by providing basic cash support.

“*Underserved*” means:

1. For service funding purposes, individuals aged 60 and over who are unable to access needed services; or
2. Areas where the service identified as needed is not available because there is no provider for that service; or
3. Existing providers of that service are regularly unable to deliver the amount of service needed.

“*Voucher*” means the mechanism used to purchase a specific service from a vendor on behalf of an individual client or clients.

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

17—28.4(231,249H) Disbursement of funds.

28.4(1) Administration. The department may use up to 7 percent of the service dollars appropriated to the department from the SLTF for purposes of implementing and administering the functions delegated to the department by Iowa Code chapter 249H.

28.4(2) Identification of service needs.

a. The department, in collaboration with the area agencies on aging, shall conduct, on a four-year cycle, a statewide needs assessment designed to identify individuals aged 60 and over as underserved.

b. In addition to the funds given in 28.4(1), the department may withhold up to \$100,000 for each four-year cycle from the service dollars appropriated to the department from the SLTF to conduct a statewide needs assessment.

c. The department shall seek partners and other funding sources to share the cost of implementing the survey.

28.4(3) Process for disbursement of funds to AAA. The process for disbursement of funds to AAA shall be incorporated into the area plan process outlined in the OAA.

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

17—28.5(231,249H) Eligible use of funds.

28.5(1) AAA may use up to 7 percent of the service dollars for purposes of developing, implementing and administering local long-term care services and for collecting and reporting required data.

28.5(2) The funds distributed to the AAA by the department from the senior living trust fund shall be used to:

- a.* Provide services to low- and moderate-income Iowans aged 60 and over;
- b.* Provide long-term care services to enhance the ability of seniors to appropriately avoid or delay institutionalization;
- c.* Provide services through:
 - (1) Enhancement and expansion of existing providers to serve new seniors;
 - (2) Provision of new units of service to existing seniors and new areas;
 - (3) Identification and development of new providers; and
 - (4) Addition of new funding sources to maintain current service levels when service levels would otherwise decline due to loss of purchasing power.

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

17—28.6(231,249H) Client participation. The AAA may use client participation for services funded under Iowa Code chapter 249H. When client participation is used:

28.6(1) Eligibility shall be based on self-declaration by the client or declaration on the client's behalf by the client's legal representative. If the provider or AAA has reason to believe that the declaration is inaccurate or misrepresents the client's financial status, the provider or AAA may require documentation of income and resources and subsequently may discontinue further financial assistance from the senior living trust fund if the individual is found ineligible.

28.6(2) Funds generated through client participation must be used by the AAA or contracted service provider to purchase the respective service for which the funds were received.

28.6(3) An AAA may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the AAA does not utilize Older Americans Act funding for the same service category.

28.6(4) An AAA subcontractor may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

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

17—28.7(231,249H) Reallotment of unobligated funds.

28.7(1) If the department determines prior to the end of the fiscal year that an AAA will have unused funds, the department may reallocate the unused funds to one or more AAA in accordance with demonstrated utilization or by a reallocation method specified by IAPI. The AAA receiving these funds shall obligate them by the end of the fiscal year in which they are reallocated.

28.7(2) Any unobligated funds remaining at the end of the state fiscal year shall be returned to the department and deposited in the Iowa senior living trust fund.

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

17—28.8(231,249H) Prohibited use of senior living trust fund moneys. SLTF moneys shall not be used to:

1. Purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

2. Replace existing funding for a long-term care service.

The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for seniors and results in an increase in total AAA funding for long-term care services to seniors equal to the SLTF dollars used for replacement.

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

17—28.9(231,249H) Disbursement of SLTF funds to AAA subcontractors.

28.9(1) *Use of SLTF funding by subcontractors.*

a. Funds contracted by an AAA from the SLTF shall be used to provide long-term care services to enhance the ability of Iowans aged 60 and over with low or moderate income to appropriately avoid or delay institutionalization.

b. The AAA subcontractor shall not use senior living trust funds to replace existing funding for a long-term care service. The AAA may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the subcontractor to another long-term care service for the elderly and results in an increase in total funding for long-term care services by the subcontractor to seniors that is equal to the senior living trust fund dollars used for replacement.

28.9(2) *Prioritization of service contracts.* The AAA may prioritize service contracts and funding levels by applying criteria that include, but are not limited to, the following:

a. Local priorities in order to fulfill unmet needs.

b. The provider's commitment to obtain or provide matching funds.

c. Provider commitment to use client participation.

- d. Cost.
- e. The provider's history of providing quality service.

28.9(3) Criteria to receive funds as a subcontractor of an AAA.

a. The applicant for senior living trust funds must demonstrate that the proposed long-term care alternative service(s):

- (1) Will be responsive to the service priorities identified by the AAA; or
- (2) Will address other significant unmet service needs of eligible seniors as documented by the applicant.

b. The applicant must document the ability to provide the proposed services and the related administration, financial tracking and reporting required by a subcontractor under these rules.

c. The subcontractor must agree to meet the criteria set out in this subrule in addition to criteria established by the AAA in its request for proposal and contract.

d. The subcontractor shall ensure that all employees providing in-home care to clients have had a dependent adult abuse and criminal history background check and have been cleared for said functions in accordance with Iowa Code section 135C.33.

e. Senior living trust funds shall not be contracted to a provider that has been prohibited from participating in the Medicare or medical assistance programs.

f. The subcontractor shall commit to seeking third-party reimbursement when available.

28.9(4) Disbursements of funds to AAA subcontractors.

a. Method. AAA may use the method or methods of disbursing funds determined to best ensure effective provision of services that will address documented unmet needs, including contracts, grants, vouchers and direct services.

(1) Provider applications shall be due at the respective AAA office by the date given in the request for proposal for review and possible approval by the AAA.

(2) Funds shall be disbursed by the AAA following the receipt of funds from the department.

b. SLTF service dollars appropriated under Iowa Code section 249H.7 shall be disbursed to subcontractors through the area plan process as described in 17 IAC 5.

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

17—28.10(231,249H) Reporting requirements.

28.10(1) AAA subcontractors.

a. Area agency on aging subcontractors shall submit monthly reports to the area agency on aging based upon reporting forms that are available from the AAA.

b. Subcontractor monthly reports, excepting those submitted by legal services providers, shall provide data for the previous month and by year-to-date for:

- (1) Total number of clients served; and
- (2) For each client receiving financial assistance from senior living trust funds, the report must be by service category, the number of units of service provided, the number of units of service not provided, the reasons services were not provided, and expenditures.

c. Subcontractors shall provide other information as requested by the AAA.

d. Subcontractors, excepting legal services providers, shall participate in the NAPIS client registration process.

e. Subcontractors providing legal services shall report in aggregate:

- (1) Unduplicated count of clients served;
- (2) The number of units of service provided;
- (3) The number of units of service not provided;
- (4) The reasons services were not provided; and
- (5) Expenditures.

28.10(2) Area agencies on aging.

a. Area agencies on aging shall, at a minimum, submit monthly reports to the department, as specified by the department in one or more IAPIs governing reporting requirements.

b. Each AAA shall use the NAPIS client registration process for clients receiving HCBS senior living assistance, with the exception of clients receiving legal assistance.
[ARC 8489B, IAB 1/27/10, effective 1/7/10]

17—28.11(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 8489B, IAB 1/27/10, effective 1/7/10]

These rules are intended to implement Iowa Code chapters 231 and 249H.

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CHAPTER 29
ELDER GROUP HOMES

[Prior to 4/14/04, see 321—Ch 26]

Rescinded IAB 12/30/09, effective 1/1/10