

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

Created by 1992 Iowa Acts, chapter 1140, section 8
 [Prior to 8/21/91, see Veterans Affairs Department[841]]
 [Prior to 1/6/93, see Veterans Affairs Division[613]]

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CHAPTER 1
ORGANIZATION AND PROCEDURES
[Prior to 6/21/91, see Veterans Affairs Department[841] Chs 1, 3, 5]
[Prior to 1/6/93, see Veterans Affairs Division[613] Chs 1, 3, 5]

801—1.1(35,35A,35D) Definitions. The following definitions are unique to the commission of veterans affairs:

“Annual school of instruction” means annual classroom recertification training for officers sponsored and directed by the commission.

“Armed forces graves” means graves of any individuals who die during or after discharge from honorable service in the army, navy, air force, marines, merchant marines, coast guard, or as a federally activated reservist or member of the national guard, and are buried within the state of Iowa.

“Certificate of training” means a certificate provided to an officer upon satisfactory completion of an annual school of instruction.

“Commandant” means the commandant of the Iowa Veterans Home.

“Commission” means the Iowa commission of veterans affairs.

“Commissioner” means a member of the Iowa commission of veterans affairs.

“County commission” means a county commission of veteran affairs.

“County commissioner” means a member of a county commission of veteran affairs.

“Executive director” means the executive director of the Iowa commission of veterans affairs.

“Officer” means an executive director of a county commission, a county commissioner, or a clerical assistant of a county commission.

801—1.2(35,35A,35D) Commission. The commission is established and operates in accordance with Iowa Code chapter 35A as amended by 1992 Iowa Acts, chapter 1140, sections 7 to 11.

1.2(1) Office location. The commission maintains its office at the Iowa Commission of Veterans Affairs at Camp Dodge. The mailing address is: Iowa Commission of Veterans Affairs, c/o Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The telephone number is (515)242-5331 or 1-800-838-4692 (1-800-VET-IOWA).

1.2(2) Meetings and conduct of business.

a. Meetings. Regular meetings of the commission shall be held the first Wednesday of each quarter (January, April, July, October) at 10 a.m. Notice of the time, place, and tentative agenda of all meetings shall be posted on the bulletin board located in the office of the governor 24 hours prior to the meeting. Special meetings shall be held pursuant to call by the chairperson. Notice of time and place shall be posted in the same manner as a regular meeting.

b. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

c. A quorum is required to carry a position.

d. Copies of minutes shall be kept on file in the office of the commission.

e. In cases not covered by these rules, Robert’s Rules of Order shall govern.

1.2(3) Duties. The duties of the commission are as follows:

a. Organize and annually select a chairperson, senior vice-chairperson and a junior vice-chairperson at the first meeting of each state fiscal year.

b. Adopt rules pursuant to Iowa Code chapter 17A in accordance with 801—Chapters 2, 3, and 4 and establish policy for management and operation of the commission.

c. Prescribe the duties of the executive director and other employees as deemed necessary to carry out the duties of the commission, including but not limited to those set out in rule 1.3(35,35A). Those duties not all-inclusive are training of officers in accordance with Iowa Code chapter 35B, maintenance of the war orphans educational fund, maintaining information and data concerning military service records of Iowa veterans, collecting and maintaining information concerning veterans affairs, and maintaining armed forces graves registration. The executive director shall report directly to the commission. The commission shall supervise the executive director’s administration of commission policy other than those related to the Iowa Veterans Home. The executive director shall make a full and detailed report biennially regarding matters pertaining to the commission other than those related to Iowa Code section 35D.17.

- d. Supervise the commandant's administration of commission policy for the operation and conduct of the Iowa Veterans Home as set out in rule 1.4(35D,35A) and 801—Chapter 10.
- e. Maintain information and data concerning military service records of Iowa veterans.
- f. Provide assistance to county commissions including, but not limited to, adoption of rules regarding training of officers, provision of training courses in accordance with Iowa Code chapter 35B as amended by 1992 Iowa Acts, chapter 1075, section 2.
- g. Permanently maintain records pertaining to the war orphans educational fund in accordance with Iowa Code section 35.7 as amended by 1992 Iowa Acts, chapter 1140, section 4.
- h. Collect and maintain information concerning veterans affairs.
- i. Provide information concerning veterans service records and veterans affairs data to authorized recipients in accordance with 801—Chapter 6.
- j. Maintain alphabetical armed forces graves registration according to procedures as set out in rule 1.7(35A,35B).

801—1.3(35,35A) Executive director. The executive director is responsible for administering the duties of the commission other than those related to the Iowa Veterans Home.

1.3(1) Office location and hours. The office of the executive director is located at Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The office is open to the public during the hours of 8 a.m. to 4:30 p.m. except Saturday, Sunday, and holidays. The telephone number is (515)242-5331.

1.3(2) Administrative staff. The executive director provides direction to administrative staff employed by the commission to assist the executive director in carrying out assigned duties.

1.3(3) Investigation of applications. The executive director shall examine all applications and approve or disapprove same and make any investigation necessary to establish facts regarding veterans service status and veterans affairs data in accordance with Iowa Code chapters 35 and 35A.

801—1.4(35A,35D) Commandant. The commandant is responsible for administering and enforcing all rules adopted by the commission pertaining to the operation of the Iowa Veterans Home.

1.4(1) Office location and hours. The office of the commandant is located in the Sheeler Building at the Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485. The office is open to the public during the hours of 8 a.m. to 4:30 p.m. except Saturday, Sunday, and holidays. The telephone number is (515)752-1501. In cases of emergencies after hours, the commandant or designee may be reached at that telephone number.

1.4(2) Biennial report. The commandant shall make a full and detailed report biennially regarding matters pertaining to the Iowa Veterans Home in accordance with Iowa Code section 35D.17.

801—1.5 and 1.6 Reserved.

ARMED FORCES GRAVES REGISTRATION

801—1.7(35A,35B) Armed forces graves registration. Armed forces graves registration shall be completed as follows:

1.7(1) Duties of the funeral director. The funeral director who contracts to inter the deceased veteran shall complete Armed Forces Graves Registration Record, Form 582-1002, in duplicate, forwarding the original and copy to the county commission.

1.7(2) Duties of the county commission. The county commission shall record the information alphabetically, and by description of location in the cemetery where the veteran is buried, in a book prescribed by the commission and kept for that purpose in the office of the county commission. The county commission shall forward the original Armed Forces Graves Registration Record to the executive director at the address provided in subrule 1.3(1).

1.7(3) Where filed. The original Armed Forces Graves Registration Record shall be filed at the office of the executive director.

1.7(4) Forms. Additional Armed Forces Graves Registration Record forms may be obtained by contacting the executive director's office in accordance with subrule 1.3(1).

This rule is intended to implement Iowa Code sections 35A.3 and 35B.19.

801—1.8 and 1.9 Reserved.

WAR ORPHANS EDUCATIONAL AID

801—1.10(35,35A) War orphans educational aid. Rescinded IAB 2/28/07, effective 1/29/07.

MERCHANT MARINE WAR BONUS

801—1.11(35) Merchant marine war bonus. The merchant marine war bonus shall be administered in accordance with 1999 Iowa Acts, chapter 180, sections 2 and 5.

1.11(1) Eligibility. This rule applies to former members of the active, oceangoing merchant marines who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, and who had maintained residence in this state for a period of at least six months immediately before entering the merchant marine service, and who were discharged under honorable conditions.

1.11(2) Application procedures. The application is available at the commission of veterans affairs. The application may be submitted to the commission with name, address and telephone number, along with required document DD-214.

1.11(3) Department processing and investigation.

a. The time period for filing applications shall be from July 1, 1999, to July 1, 2004.

b. The executive director of the commission of veterans affairs will approve or disapprove the application.

1.11(4) Appeals procedure. Decisions of the executive director are subject to review by the commission. Applicants may appeal the decisions of the commission as provided by Iowa Code section 17A.19.

1.11(5) Office address. The office of the commission of veterans affairs is located at 7700 NW Beaver Drive, Building A6A, Johnston, Iowa 50131-1902.

1.11(6) Qualified recipient and amount of payment. The former merchant marine or surviving unmarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person, shall be paid and entitled to receive from moneys appropriated for that purpose the sum of \$12.50 for each month that the person was on active duty in the merchant marine service, all before December 31, 1946, not to exceed a total sum of \$500.

801—1.12 to 1.14 Reserved.

TRAINING FOR COUNTY COMMISSIONS

801—1.15(35A,35B) Training for county commissions. The commission shall provide training for officers in accordance with Iowa Code section 35A.3.

1.15(1) An officer shall attend an annual school of instruction. After attending the annual school of instruction, the officer must take and satisfactorily pass a written test prescribed by the commission. The commission shall issue a certificate of training to the officer upon completion of the annual school of instruction. Newly appointed officers must complete the annual school of instruction within one year from the date of appointment.

1.15(2) An officer must maintain certification to remain in office. To maintain certification, an officer shall attend an annual school of instruction. The commission shall issue a certificate of training to the officer upon completion of the annual school of instruction.

1.15(3) The annual school of instruction and all associated training materials will be provided at the expense of the commission.

1.15(4) Subject to available appropriation, travel and lodging expenses incurred in attending the annual school of instruction shall be eligible for reimbursement by the respective county from the appropriation authorized in Iowa Code section 35B.14.

1.15(5) Attendance at training courses sponsored and directed by veteran organizations other than the commission may not be substituted for the annual school of instruction.

1.15(6) The executive director shall maintain documentation regarding the school of instruction including, but not limited to, agendas, presentation dates, attendees, test results, and issuance of certificates of training.

1.15(7) Inquiries regarding an annual school of instruction shall be directed to the executive director at the address set out in subrule 1.3(1). The executive director shall answer such inquiries.

1.15(8) Disputes regarding the annual school of instruction, certificates of training and related matters shall be reviewed by the chairperson of the commission and a decision rendered by same. Disputes which remain unresolved shall be referred to the commission. The decision of the commission shall be final.

These rules are intended to implement Iowa Code chapters 35 and 35A and sections 35B.6, 35B.11, 35D.1, 35D.13, 35D.16, and 35D.17.

[Filed 5/10/79, Notice 3/7/79—published 5/30/79, effective 7/5/79]

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CHAPTER 2
PETITION FOR RULE MAKING
[Prior to 8/21/91, see Veterans Affairs Department[841] Ch 2]
[Prior to 1/6/93, see Veterans Affairs Division[613] Ch 2]

The Iowa commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to petitions for rule making which are printed in the first volume of the Iowa Administrative Code.

801—2.1(17A) Petition for rule making.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

2.1(3) The executive director shall notify the chairperson of the commission that the petition has been filed.

801—2.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The telephone number is (515)242-5331”.

These rules are intended to implement Iowa Code section 17A.7.

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[Filed emergency 12/18/92—published 1/6/93, effective 1/1/93]

[Filed 12/19/96, Notice 10/23/96—published 1/15/97, effective 2/19/97]

CHAPTER 3
DECLARATORY RULINGS

[Prior to 8/21/91, see Veterans Affairs Department[841] Ch 2]

[Prior to 1/6/93, see Veterans Affairs Division[613] rule 2.4]

The Iowa commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to declaratory rulings which are printed in the first Volume of the Iowa Administrative Code.

801—3.1(17A) Petition for declaratory ruling.

In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located at Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

In lieu of the words “(agency name)”, insert “Iowa commission of veterans affairs”.

At the end of this rule, insert “The executive director shall notify the chairperson of the commission that the petition has been filed.”

801—3.3(17A) Inquiries.

In lieu of the words “(designate official by full title and address)”, insert “the executive director at Camp Dodge, Building A6A, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. The telephone number is (515)242-5331”.

These rules are intended to implement Iowa Code section 17A.9.

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[Filed emergency 12/18/92—published 1/6/93, effective 1/1/93]

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CHAPTER 4
AGENCY PROCEDURE FOR RULE MAKING

The Iowa commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to procedures for agency rule making which are printed in the first Volume of the Iowa Administrative Code.

801—4.3(17A) Public rule-making docket.

4.3(2) In lieu of the words “(commission, board, council, director)”, insert “Iowa commission of veterans affairs”.

801—4.4(17A) Notice of proposed rule making.

4.4(3) In lieu of the words “(specify time period)”, insert “one year”.

801—4.5(17A) Public participation.

4.5(1) In lieu of the words “(identify office and address)”, insert “the office of the executive director. This office is located in Building A6A at Camp Dodge, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

801—4.6(17A) Regulatory flexibility analysis.

4.6(3) In lieu of the words “(designate office)”, insert “the office of the executive director. This office is located in Building A6A at Camp Dodge, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

801—4.11(17A) Concise statement of reasons.

4.11(1) General.

In lieu of the words “(specify office and address)”, insert “the office of the executive director. This office is located in Building A6A at Camp Dodge, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902”.

801—4.13(17A) Agency rule-making record.

4.13(2) Contents.

In lieu of the words “(agency head)”, insert “chairperson of the commission of veterans affairs”.

801—4.14(17A,35D) Uniform waiver rule.

4.14(1) To the extent a waiver or variance is consistent with applicable statute, constitutional provision, or other provision of law, the commission of veterans affairs may issue an order, in response to the timely filing of a completed petition or on its own motion, granting a waiver or variance, in whole or in part, from the requirements of a rule under the jurisdiction of said commission, as applied to the circumstances of a specified person, if the commission finds clear and convincing evidence of all of the following:

- a.* The application of the rule to the person at issue would result in undue hardship to that person; and
- b.* The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law; and
- c.* The waiver of the rule in the specific case would not prejudice the substantial legal rights of any person; and
- d.* Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the rule for which the waiver or variance is requested.

The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the chairperson of the commission of veterans affairs based on the unique, individual circumstances set out in the petition and upon consideration of all relevant factors.

4.14(2) A waiver or variance, if granted, shall be drafted by the commission so as to provide the narrowest exception possible to the provisions of the rule. The commission may place any condition on a waiver or variance that the commission finds desirable to protect the public health, safety and welfare.

A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the agency, a waiver or variance may be renewed if the agency finds that all of the factors set out in subrule 14.4(1) remain valid.

4.14(3) The burden of persuasion rests with the person who petitions the commission for the waiver or variance of a rule.

4.14(4) This uniform waiver rule shall not preclude the commission from granting waivers or variances in other contexts or on the basis of other standards if the statute or other rules authorize it to do so and the commission deems it appropriate to do so.

801—4.15(17A,35D) Procedures for granting waivers.

4.15(1) Any person may file a petition with the commission of veterans affairs requesting a waiver or variance, in whole or in part, of a commission rule on the grounds that the application of the rule to the particular circumstances of that person justifies a waiver under this uniform waiver rule. The commission chairperson shall receive written petitions.

4.15(2) A petition for a waiver or variance shall include the following information where applicable and known to the person requesting the waiver or variance:

a. The name, address, and case number or state identification number of the entity or person for whom a waiver or variance is requested.

b. A description and citation of the specific rule from which a waiver or variance is requested.

c. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

d. The relevant facts that the petitioner believes would justify a waiver or variance. 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 or variance.

e. A history of the commission's action relative to the petitioner.

f. Any information regarding the commission's treatment of similar cases, if known.

g. The name, address, and telephone number of any person inside or outside state government who would be adversely affected by the granting of the petition or who otherwise possesses knowledge of the matter with respect to the waiver or variance request.

h. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information pertaining to the waiver or variance.

4.15(3) The procedural guidelines stated under the Iowa Administrative Procedure Act, Iowa Code chapter 17A, shall govern the form, filing, timing and contents of petitions for the waivers of rules and the procedural rights of persons in relation to such petitions.

4.15(4) The commission shall acknowledge a petition upon receipt. The petitioner shall serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been served.

4.15(5) Prior to issuing an order granting or denying a waiver or variance request, the commission may request additional information from the petitioner relative to the application and surrounding circumstances.

4.15(6) An order granting or denying a request for waiver or variance shall be in writing and 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 that action is based, and a description of the precise scope and operative period of the waiver or variance if one is issued. The commission shall grant or deny a petition for the waiver or variance of all or a portion of a rule 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 waiver petition has been filed in a contested case proceeding, the agency shall grant or deny the petition no later than the time at which the final decision in that contested case is issued. Failure of the commission to grant or deny such a petition within the required time period shall be deemed a denial of that petition by the commission.

4.15(7) Within seven days of its issuance, any order issued under the uniform waiver rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

4.15(8) Subject to the provisions of Iowa Code section 17A.3(1) “e,” the commission shall maintain a record of all orders granting and denying requests for waivers or variances under this uniform waiver rule. The records shall be indexed by rule and available for public inspection.

4.15(9) Semiannually, the commission shall prepare a report identifying the rules for which a waiver or variance has been granted or denied, the number of times a waiver or variance was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, a general summary of the reasons justifying the commission’s actions on the waiver or variance requests and, to the extent practicable, detailing the extent to which the granting of a waiver or variance has affected the general applicability of the rule itself and established a precedent for additional waivers or variances. Copies of this report shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

4.15(10) The provisions of rules 4.14(35D) and 4.15(35D) shall not apply to rules that define the meaning of a statute or other provisions of law or precedent if the commission does not possess delegated authority to bind the courts to any extent with its definition and do not authorize the commission to waive any requirement created or duty imposed by statute.

4.15(11) After the commission 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 invoked.

These rules are intended to implement Iowa Code sections 17A.4 and 17A.9A, Iowa Code chapter 35D, and Executive Order Number 11.

[Filed emergency 12/18/92—published 1/6/93, effective 1/1/93]

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CHAPTER 5
Reserved

CHAPTER 6
FAIR INFORMATION PRACTICES
[Prior to 8/21/91, see Veterans Affairs Department[841] Ch 4]
[Prior to 1/6/93, see Veterans Affairs Division[613] Ch 4]

The Iowa commission of veterans affairs hereby adopts, with the following exceptions and amendments, the Uniform Administrative Rules pertaining to fair information practices which are printed in the first Volume of the Iowa Administrative Code.

801—6.1(17A,22) Definitions. The commission adopts the definitions in the Uniform Rules with the noted amendments and those additional definitions listed below.

“Agency”. In lieu of the words *“(official or body issuing these rules)”*, insert *“Iowa commission of veterans affairs”*.

“Client” means a person who has applied for or receives services or assistance from the agency.

“Custodian” means the agency or person lawfully delegated authority by the agency to act for the agency in implementing Iowa Code chapter 22. For Iowa Veterans Home records, the custodian is the commandant. For all other commission records, the custodian is the executive director.

“Legal representative” means a person recognized by law as standing in the place of or representing the interests of another for one or more purposes. For example, guardians, conservators, attorneys, next-of-kin, executors, or administrators for a deceased person are legal representatives for certain purposes.

“Mental health information” means oral, written, or otherwise recorded information which indicates the identity of a person receiving professional services, as defined in Iowa Code section 228.1(5), and which relates to diagnosis, course, or treatment of the person’s mental or emotional condition. Mental or emotional conditions include mental illness, mental retardation, degenerative neurological conditions, and any other condition identified in professionally recognized diagnostic manuals for mental disorders.

“Substance abuse information” means information which indicates the identity, diagnosis, prognosis or treatment of any person in an alcohol or drug abuse program.

801—6.3(17A,22) Request for access to records.

6.3(1) Location of record. A request for access to a record pertaining to the Iowa Veterans Home should be addressed to the Commandant, Iowa Veterans Home, 1301 Summit, Marshalltown, Iowa 50158-5485. For all other commission records, or if the location of the record is unknown by the requester, the request for access to a record shall be directed to the Executive Director, Camp Dodge, 7700 NW Beaver Drive, Johnston, Iowa 50131-1902. If the request for access to a record is misdirected, agency personnel will promptly forward the request to the appropriate person within the agency.

6.3(2) Office hours. In lieu of the words *“(insert customary office hours and, if 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. daily excluding Saturdays, Sundays and holidays”*.

6.3(7) Supervisory fee.

In lieu of the words *“(specify time period)”*, insert *“one-half hour”*.

801—6.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.

In lieu of the words *“(designate office)”*, insert *“office of the Iowa commission of veterans affairs”*.

801—6.7(17A,22) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed and the time period during which the record may be disclosed. The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity.

No confidential information about clients of the agency shall be released without the client's consent, except as provided in rule 6.10(17A,22). Release of information includes:

1. Granting access to or allowing the copying of a record,
2. Providing information either in writing or orally, or
3. Acknowledging information to be true or false.

6.7(1) Forms.

a. General. Agency forms are to be used for releases by the subject as noted below. However, information may be released with authorization on a form from another source providing that such meets the requirements of law.

b. Obtaining information from a third party. The Iowa Veterans Home is required to obtain information to establish eligibility, provide services and determine charges. Requests to third parties for this information involve release of confidential identifying information about clients. Consent to Release of Information, Form 475-0859, is used for releases by the subject.

c. Disclosure of information to a third party. At the request of the subject, the Iowa Veterans Home releases information to third parties. Form 475-0859, Consent to Release of Information, or Form 475-0700, Release of Condition Information, is used, depending on the nature of the authorization.

d. Mental health and substance abuse information. Mental health or substance abuse information can be released only by completion of the specific authorization section of Form 475-0859 or a similar form from another source that meets the requirements of law.

e. Photographs or videotapes. Form 475-1073, Authorization to Take and Use Photographs/Videotapes, is used for permission to use photographs or videotapes for the purposes specified on the form.

6.7(2) Exceptions to use of forms.

a. Counsel. Appearance of counsel before the agency on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

b. Public official. A letter from the subject to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency shall be treated as an authorization to release information. The agency shall release sufficient information about the subject to the official to resolve the matter.

c. Medical emergency. Agency staff may authorize release of confidential information to medical personnel in a medical emergency if the subject is unable to give or withhold consent. As soon as possible after the release of information, the subject shall be advised of the release.

d. Abuse information. Consent to release information is not required to report suspected dependent adult abuse.

6.7(3) Consent by subject's legal representative.

a. Exercise of right. The subject's rights under this rule may also be exercised by the subject's legal representative, except as provided in paragraph 6.7(3) "b."

b. Exceptions.

(1) Scope of authority. Legal representatives may act only within the scope of their authority. For example, court-appointed conservators and protective payees appointed by an agency shall have access to and authority to release the following information only:

1. Name and address of client.
2. Amounts of assistance or type of financial services received.
3. Information about the economic circumstances of the client.

(2) Substance abuse information. Only the subject can consent to the disclosure of substance abuse information, regardless of the subject's age or condition.

(3) Failure to act in good faith. If the agency has reason to believe that the legal representative is not acting in good faith in the best interests of the subject, the agency may refuse to release information on the authorization of the legal representative.

801—6.8(17A,22) Notice to suppliers of information. When the agency requests a person to supply information about that person, the agency shall notify the person of the use that will be made of the information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the written form used to collect the information, on a separate fact sheet or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means.

The notice shall generally be given at the first contact with the agency and need not be repeated at every following contact. Where appropriate, the notice may be given to a person's legal representative. Notice may be withheld in an emergency.

In general, the agency requests information to determine eligibility, to determine changes for services, to provide appropriate services or treatment, and to perform administrative functions. Information is routinely shared outside the agency when required by rules or law. Consequences of failure to provide information include ineligibility for services, denial of services, or provision of inadequate services.

801—6.9(17A,22) Release to subject. The agency shall release confidential records to the subject of the record, except as otherwise noted.

6.9(1) The agency need not release the following records to the subject:

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

b. The identity of a person 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.

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

d. The agency may withhold information as otherwise authorized by law.

6.9(2) 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.

801—6.10(17A,22) Disclosure without consent of the subject. Open records are routinely disclosed without consent of the subject. To the extent allowed by law, disclosure of confidential records may occur without consent of the subject or the subject's legal representative. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

6.10(1) Internal use. Confidential information may be disclosed to employees and agents of the agency as needed for the performance of their duties. The custodian of the record shall determine what constitutes legitimate need to use confidential records.

People affected by this rule include:

a. Field work or practicum students, participants of work placement programs and volunteers working under the direction of the agency.

b. Commission members.

c. Consultants to the agency.

d. Policy review and advisory committees.

6.10(2) Medical emergency. Confidential information may be disclosed in a medical emergency if the subject is unable to give or withhold consent in accordance with paragraph 6.7(2) "c."

6.10(3) Audits. Information concerning revenues and expenditures is released to staff of the state executive and legislative branch who are responsible for ensuring that public funds have been managed correctly. Information is also released to auditors from federal agencies that provide program funds.

6.10(4) Accreditation and regulatory surveys. Information is provided to staff of applicable accreditation, licensure and other applicable agencies in the course of surveys or investigations regarding compliance with regulations and standards.

6.10(5) Release to court. Information is released to the court as required by law.

6.10(6) Research. Information that does not identify individual clients may be disclosed for research purposes with consent of the custodian responsible for the record. Requests to do research involving records of the Iowa Veterans Home shall be approved by the Iowa Veterans Home Research Review Committee.

6.10(7) Required by law. Information is shared with other agencies without a contract or written agreement where state or federal law or regulations require it.

6.10(8) Imminent harm. Information may be released to an individual or the police, or both, pursuant to a showing of compelling circumstances affecting the health or safety of a client or any other individual. Notice of disclosure is transmitted to the last-known address of the subject.

6.10(9) Law violation. Disclosure of information indicating an apparent violation of the law will be released to appropriate enforcement authorities.

6.10(10) Specific authorization. Any disclosure specifically authorized by the statute under which the record was collected or maintained will be made in accordance with the statute.

801—6.11(17A,21,22) Availability of records.

6.11(1) General. Agency records are open for public inspection and copying unless otherwise provided by rule or law.

6.11(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. (Iowa Code section 422.20)
- c. Records which are exempt from disclosure.
- d. Minutes of closed meetings of a government body.
- e. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets.
- f. 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 negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law; or
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency.
- g. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. (Iowa Code section 622.10)
- h. Hospital records, medical records, and professional counselor records of the condition, diagnosis, care, or treatment of clients or former clients of the commission.
- i. Circulation records of the Iowa Veterans Home library.
- j. Any other records made confidential by law.

6.11(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 6.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the record from inspection as provided in subrule 6.4(3).

This rule is intended to implement Iowa Code chapters 17A, 21 and 22.

801—6.12(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 6.1(17A,22). For each record system, this rule describes the legal authority for the collection of that information, the means of storage of

that information, and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

6.12(1) *Prisoner of war registry.* These records are collected under the authority of Iowa Code section 35A.2(1). They are maintained in hard copy by the agency. Requests for these records should be referred to the executive director.

6.12(2) *Military graves registration.* These records are collected under the authority of Iowa Code section 35A.3(11). They are maintained in hard copy by the agency, on Iowa Form 582-1002, CPE-94252. Requests for these records should be referred to the executive director.

6.12(3) *World War I, World War II, Korea, Vietnam veterans bonus.* These records are collected under the authority of Iowa Code section 35A.3(5). They are maintained in hard copy by the agency. Requests for these records should be referred to the executive director.

6.12(4) *Iowa women veterans.* These listings of all women veterans residing in Iowa are collected under the authority of Iowa Code section 35A.3(5). The records are maintained in hard copy format. Requests for these records should be referred to the executive director.

6.12(5) *Members, directors—county commission of veterans affairs.* These listings of current mailing addresses of all Iowa county commission members and directors are collected under the authority of Iowa Code section 35A.3(8). The records are maintained in hard copy format. Requests for these records should be referred to the executive director.

6.12(6) *Iowa war orphans Act bonus applications.* These listings are award applications and bonus payments from the War Orphans Educational Fund and are collected in accordance with Iowa Code section 35A.2(3) and maintained in hard copy format. Requests for these records should be referred to the executive director.

6.12(7) *Iowa Korean War Memorial Fund.* This listing consolidates contributions of all funds received for the Iowa Korean War Memorial authorized by the governor's directive of August 1986. These records are maintained in hard copy format. Requests for these records should be referred to the executive director.

6.12(8) Reserved.

6.12(9) *DD Form 214, Notification of Separation from Service.* This listing provides information to the state on individuals separating from active military service in the armed forces. It is used routinely to establish entitlement by the veteran to county, state and federal benefits such as hospitalization and educational assistance. Request for verification of service should be addressed to the executive director.

6.12(10) *Iowa Veterans Home client case records.* Iowa Veterans Home client records contain identifying information, demographic information, financial information, clinical assessment and care information and related documentation. Some of this information is maintained on microfilm. Automated data processing associated with Iowa Veterans Home client records include admission and discharge systems, billing systems, client banking system, and selected client data systems. Requests for these records should be referred to the commandant. Legal authority for collection of this information and applicable determinations regarding confidentiality are found in Iowa Code section 22.7 and chapters 35D, 222, 228, and 229. Requests for information from these records should be referred to the commandant.

6.12(11) *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 sections 22.7(11) and 22.7(18).

801—6.13(17A,22) Other groups of records. This rule describes groups of records maintained by the agency other than record systems defined in rule 6.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information, as discussed in rule 6.7(17A,22). In addition, the records may contain information about individuals.

6.13(1) Rule making. Rule-making records may contain information about individuals making written or oral comments or proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

6.13(2) Iowa commission of veterans affairs meeting records. Agendas, minutes, and materials deliberated by the commission are available from the executive director. Commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by personal identifier nor stored on an automated data processing system.

6.13(3) Publications. News releases, literature, and reports regarding the Iowa commission of veterans affairs, newsletters from various veterans associations or from the federal government are available from the executive director. News releases, literature, reports regarding the Iowa Veterans Home are available from the commandant. Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency committees. This information is not retrieved by individual identifier and is not currently stored on an automated data processing system.

6.13(4) All other records that are not exempted from disclosure by law.

801—6.14(17A,22) Data processing system. Data processing systems used by this agency do not permit the comparison of personally identifiable information in one record system with personally identifiable information in another system.

801—6.15(17A,22) Applicability. This chapter does not:

1. Require the agency to index or retrieve records which contain information about the 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 possession of the agency which are governed by regulations 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 regulations of the agency.

These rules are intended to implement Iowa Code chapter 22.

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CHAPTER 7
Reserved

CHAPTER 8
CONTESTED CASES

801—8.1(17A,35) Scope and applicability. This chapter applies to contested case proceedings related to decisions for which the Iowa commission of veterans affairs has statutory authority.

801—8.2(17A,35) Definitions.

“Aggrieved party” means any agency, organization or individual who alleges their rights have been denied by action of the commission.

“Chairperson” means chairperson of the commission.

“Commission” means Iowa commission of veterans affairs.

“Proposed decision” means the recommended findings of fact, conclusions of law, decision and order in a contested case in which the commission did not preside.

801—8.3(17A,35) Complaint procedure.

8.3(1) Complaints relating to the Iowa Veterans Home. Applicants or members of the Iowa Veterans Home must first exhaust the appeal process set out in rules 10.45(35A,35D) and 10.46(35A,35D), respectively.

8.3(2) Content of complaints. Complaints to the commission should state the name and address of the aggrieved party, identify the specific agency action which is disputed, the issues in dispute, and request a hearing, if applicable.

8.3(3) The chairperson shall review the appeal to determine if the issue is within the commission’s scope.

8.3(4) Within 15 calendar days of receipt of a request for hearing, the chairperson shall transfer the request to the department of inspections and appeals pursuant to rules 481—10.3(10A) and 10.4(10A) and shall notify the aggrieved party of this transmittal. The department of inspections and appeals shall provide the hearing in accordance with rules promulgated by that department at 481—Chapter 10.

8.3(5) Appeals.

a. Parties have 30 calendar days from the mailing date of the decision by the department of inspections and appeals to appeal the decision to the commission. If no appeal is filed, the hearing decision becomes final 30 days from the date of decision.

b. Appeals to the commission shall be filed with the chairperson at the location identified in 801—subrule 1.2(1).

c. On appeal, the commission shall permit each party to file exceptions, present briefs and, with the consent of the commission, present oral arguments to the commission. The commission shall establish a deadline for submission of the written exceptions, briefs, and requests for continuances and shall notify the parties of the deadline.

d. The commission has the authority to fully and fairly develop the record and may inquire into the matters at issue and shall receive in evidence the testimony of witnesses and any documents which are relevant and material.

e. The commission shall base its decision on the evidence contained in the record made before the department of inspections and appeals and may permit the parties to submit new evidence at its discretion upon a showing of why the new evidence was not reasonably available at the original hearing.

f. Request for continuance shall be made in writing and the reasons for the request shall be stated. The request shall be filed with the commission at the address given in 801—subrule 1.2(1).

g. The commission’s decision on appeal is effective immediately unless otherwise specified in the decision.

8.3(6) Judicial review. A party who 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 8.3(5) and receive a decision from the commission as provided in this subrule.

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

These rules are intended to implement Iowa Code section 35A.3.

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CHAPTER 9
WAR ORPHANS EDUCATIONAL ASSISTANCE FUND

801—9.1(35) War orphans educational assistance fund. The war orphans educational assistance fund shall be administered in accordance with Iowa Code sections 35.9 and 35.10. The amount of educational assistance allowed eligible war orphans is based upon an appropriation made by the Iowa general assembly on an annual basis.

801—9.2(35) Program for children of veterans who died before September 11, 2001.

9.2(1) Definition. For the purposes of this rule, a war orphan is:

a. The child of a man or woman who died in service or as a result of such service before September 11, 2001, during one of the following periods:

- (1) World War I between April 6, 1917, and June 2, 1921, inclusive.
- (2) World War II between September 16, 1940, and December 31, 1946, inclusive.
- (3) The Korean Conflict between June 25, 1950, and January 31, 1955, inclusive.
- (4) The Vietnam Conflict between August 5, 1964, and May 7, 1975, inclusive.
- (5) The Persian Gulf Conflict between August 2, 1990, and the date the President or the Congress of the United States declares a permanent cessation of hostilities, inclusive.
- (6) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.
- (7) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. The child of a national guardsman or other member of a reserve component who died or was killed in the performance of training or other duties ordered by competent federal or state authorities.

9.2(2) Residency requirement. A war orphan shall have lived in the state of Iowa for at least two years immediately preceding the filing of an application.

9.2(3) School requirement. A war orphan shall attend in this state any educational or training institution of college grade or any business or vocational training school with standards approved by the department.

9.2(4) Amount of payment. In no case shall payment of war orphans educational assistance be in excess of \$600 per person per year. There is a lifetime maximum of \$3,000 per person.

801—9.3(35) Program for children of veterans who died on or after September 11, 2001.

9.3(1) Definition. For the purposes of this rule, a war orphan is:

a. The child of a man or woman who died in service or as a result of such service on or after September 11, 2001, as follows:

- (1) While serving in the military or naval forces of the United States, to include members of the reserve components performing service or duties required or authorized under Chapter 39, United States Code, and Title 32, United States Code, Sections 502 through 505.
- (2) Active state service required or authorized under Iowa Code chapter 29A, or as a result of such service.

b. The child of a national guardsman or other member of a reserve component who died or was killed in the performance of training or other duties ordered by competent federal or state authorities.

9.3(2) Residency requirement. A war orphan shall have lived in the state of Iowa for at least two years immediately preceding the filing of an application.

9.3(3) School requirement. A war orphan shall attend in this state a community college established under Iowa Code chapter 260C or an institution of higher education governed by the state board of regents.

9.3(4) Amount of payment. In no case shall payment of war orphans educational assistance be in excess of \$5,500 per person per year or the amount of the child's established financial need, whichever is less. There is a lifetime maximum of \$27,500 per person.

801—9.4(35) General requirements.**9.4(1) Method of payment.**

a. The department shall make payment directly to the school by quarters, semesters, or periods, however the school operates.

b. No payments shall be made directly to the war orphan.

c. Full-time students are honored for higher payments over part-time students. Payments shall be prorated by the department on behalf of a war orphan on the basis of time spent in school.

d. The school shall submit triplicate billing to the executive director thereby certifying that the war orphan is in attendance and the number of hours of attendance.

9.4(2) How assistance may be used. War orphans educational assistance may be used to defray the expenses of tuition, matriculation, laboratory and similar fees, books and supplies, board, lodging, and any other reasonably necessary expense for the child or children attending a school meeting the requirements set forth above.

9.4(3) Scholastic and financial standing. War orphans educational assistance is a gift from the state of Iowa to eligible war orphans and is given regardless of scholastic or financial standing.

9.4(4) Unrestricted factors. There are no restrictions on war orphans with respect to age, number of years of planned attendance at a school of learning, or marital status.

801—9.5(35) Application process.

9.5(1) Application. Upon request, war orphans educational assistance applications may be obtained from the executive director at the address as set out in 801—subrule 1.3(1).

a. The war orphan shall complete the application in ink, by typewriter, or by computer, and the application shall be returned to the executive director.

b. A copy of the war orphan's birth certificate and proof of death of the veteran parent shall be included with the completed application. Proof of death of the veteran parent while in service may be a telegram, letter, or certified verification from the U.S. Department of Defense. Proof of death after service is a copy of a death certificate.

9.5(2) Verification. The executive director shall verify the service-connected death of a war veteran with the U.S. Department of Veterans Affairs.

These rules are intended to implement Iowa Code sections 35.8, 35.9, 35.10 and 35.11.

[Filed emergency 1/29/07—published 2/28/07, effective 1/29/07]

CHAPTER 10
IOWA VETERANS HOME
[Prior to 2/29/84, Social Services[770] Ch 134]
[Prior to 2/11/87, Human Services[498] Ch 10]
[Prior to 1/20/93, Human Services[441] Ch 10]

PREAMBLE

The Iowa Veterans Home is a long-term health care facility located in Marshalltown, Iowa, operated by the Commission of Veterans Affairs.

801—10.1(35D) Definitions relevant to Iowa Veterans Home. The following definitions are unique to rules pertaining to the Iowa Veterans Home.

“Acute alcoholic” means any disturbance of emotional equilibrium caused by the consumption of alcohol resulting in behavior not currently controllable.

“Acutely mentally ill” means any disturbance of emotional equilibrium manifested in maladaptive behavior and impaired functioning caused by genetic, physical, chemical, biological, psychological, social or cultural factors which requires hospitalization.

“Addicted to drugs” means a state of dependency as medically determined resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

“Adjutant” means the chief executive assistant of the commandant who functions as the chief operations officer.

“Admissions committee” means the committee appointed by the commandant to review applications to determine eligibility for admission and appropriate level and category of care.

“Applicant” means a person who is applying for admission into the Iowa Veterans Home.

“Assets” means items of value held by, or on behalf of, an applicant or member. Assets include, but are not limited to, cash, savings and checking accounts; stocks; bonds; contracts for sale of property; homestead or nonhomestead property. Nonrecurring windfall payments such as, but not limited to, inheritances; death benefits; insurance or tort claim settlements; and cash payments received from the conversion of a nonliquid asset to cash shall be considered assets upon receipt.

“At once” or *“timely”* means within ten calendar days.

“Commandant” means the chief executive officer of the Iowa Veterans Home.

“Commission” means the Iowa commission of veterans affairs.

“Continuously disruptive” means any behavior, on a recurring basis, which has been documented by Iowa Veterans Home staff, that causes harm to a member or staff or conflicts with the member responsibilities set forth in subrule 10.12(1).

“Countable asset” means an asset to be considered in calculation of member support obligation.

“Dangerous to self or others” means any activity by a member which would result in injury to the member or others.

“Dependent” means a person for whose financial support an applicant or member is legally responsible or obligated.

“Director of admissions” means the public service executive responsible for the admissions process, benefits programming, and member financial affairs.

“Director of resident and family services” means the administrator responsible for social work services and chaplain services for members.

“Diversion” means income that is transferred to a spouse before the member support is determined.

“DVA” means the U.S. Department of Veterans Affairs.

“Free time” means 15 days of furlough time each calendar year for which the member is not charged for care during absence.

“Full support” means the maximum daily rate of support times the billable days of care received in any month less any offsets.

"Honorable discharge" means separation or retirement from active military service. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility). Honorable discharge includes general discharges under honorable conditions.

"Income" means money gained by labor or service, or money paid periodically to an applicant or member. Income includes, but is not limited to, disability, retirement pensions or benefits; interest, dividends, payments from long-term care insurance, or other income received from investments; income from property rentals; certain moneys related to real estate contracts; earnings from regular employment or self-employment enterprises.

"IVH" means the Iowa Veterans Home.

"Legal representative" for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), as provided in Iowa Code chapters 144A, 144B, and 633. For applicant or member financial decisions, "legal representative" means conservator, power of attorney, fiduciary or representative payee.

"Medical provider" means a doctor of medicine or osteopathic medicine who is licensed to practice in the state of Iowa. Except as defined by Iowa law, a medical provider also means an advanced registered nurse practitioner or physician assistant who is licensed to practice in the state of Iowa.

"Member" means a patient or resident of IVH.

"Member support" means the dollar amount which is billed monthly to the member or legal representative for the member's care.

"PASARR" means preadmission screening and annual resident review.

"Resource" means assets and income.

"Spouse" means a person of the opposite sex who is the legal or common-law wife or husband of a veteran.

"Surviving spouse" means a person of the opposite sex who is the legal or common-law widow or widower of a veteran.

"Veteran" means a person who served in the active military and who was discharged or released therefrom under conditions other than dishonorable. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

"Voluntary discharge" means a member wishes to terminate the member's association with IVH on a permanent basis. This includes discharge for medical reasons which have been approved by a qualified medical provider. All other discharges are involuntary.

801—10.2(35D) Eligibility requirements. Veterans and spouses of veterans shall be eligible for admission to IVH in accordance with the following:

10.2(1) Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. The individual does not have sufficient means for the individual's support, or the individual is disabled by reason of disease, wounds, old age or otherwise and is in need of one of the multilevels of care available at IVH and is unable to defray the expenses of the necessary care, except as described at paragraph "e."

b. The individual cannot be employed on the day of admission.

c. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

d. An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

e. Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph "a" above, be admitted and allowed to remain at IVH upon payment of the cost of the individual's care in accordance with rules 10.14(35D) to 10.23(35D).

f. The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

g. Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual's income level exceeds the established cap.

10.2(2) Spouses and surviving spouses shall be admitted in accordance with the following:

a. The spouse or surviving spouse shall have been married to a veteran for at least one year preceding date of application or date of death of veteran.

b. The spouse of a veteran is eligible for admittance to IVH only if the veteran is admitted.

c. The surviving spouse of a deceased veteran is eligible for admittance to IVH if the deceased veteran would also be eligible for admittance to IVH if still living.

d. Spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

10.2(3) An individual who was not a member of the United States armed forces may be eligible for admittance in accordance with the limitations described in subrule 10.2(1), if the following conditions are met:

a. The individual was a member of the armed services of a nation with which the United States was allied during a time of conflict.

b. The individual is eligible for admission to a DVA medical center in accordance with U.S.C. Title 38, Chapter 17, Medical Care, Subchapter 2, Section 1710.

801—10.3(35D) Application. All applicants shall apply for admission to IVH in accordance with the following subrules:

10.3(1) All applicants shall make application to IVH through the county commission of veterans affairs in the applicant's county of residence.

10.3(2) Application shall be made on the "Veteran Application for Admission to the Iowa Veterans Home," Form 475-0409, or on the "Spouse's Application for Admission to the Iowa Veterans Home," Form 475-0410. Separate application shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

a. The county commission of veterans affairs' office.

b. DVA medical centers located in or serving veterans in the state of Iowa.

c. IVH.

10.3(3) The applicant shall be scheduled for a physical examination by a medical provider, and the results of the examination shall be entered on the application by the examining medical provider. If the applicant has had a complete physical examination within three months of application, a copy of this physical shall suffice. Information must be authenticated by the medical provider's original signature or electronic signature.

10.3(4) The following items shall be attached to the application before it is forwarded to IVH:

a. An affidavit signed by two members of the county commission of veterans affairs and notarized by the appropriate county official attesting to the best of their knowledge and belief that the applicant is a resident of that county and is an eligible applicant.

b. An original or a certified copy of the veteran's honorable discharge from the armed forces of the United States.

c. If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.

d. An original or a certified copy of applicant's birth certificate if not in receipt of Social Security.

e. A copy of divorce decrees or death certificate for the spouse, if applicable.

f. A completed "Personal Functional Assessment," Form 475-0837.

g. A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.

h. A completed "Financial Affidavit," Form 475-0839.

10.3(5) Once the requirements of subrules 10.3(2), 10.3(3) and 10.3(4) have been met, the county commission of veterans affairs shall forward the completed application to the admissions office at IVH. No county shall require additional requirements for the application for admission beyond the requirements stated in these rules. Neither shall a county require additional forms to be filled out or provided by the applicant other than the forms required by these rules.

10.3(6) Eligibility determinations are subject to approval by the commandant.

801—10.4(35D) Application processing.

10.4(1) Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

10.4(2) The admissions committee shall assign the level and category of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

10.4(3) Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the director of admissions or designee of the applicant's designated level and category of care. An applicant who does not wish to be admitted to the designated level and category of care may submit evidence to show that another level or category of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level or category of care may withdraw the application in writing or have the application denied.

10.4(4) When space is not immediately available in the level and category of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level and category of care or special care unit in the order of the date the application was received.

10.4(5) When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

a. An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care and category.

b. An applicant who requires a different level and category of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level and category of care in accordance with the date the original application was received.

c. If there is a question regarding the level and category of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission examination with appropriate staff in order to make a determination of appropriate level and category of care. If there is a question of whether or not the applicant can be appropriately treated within the scope of existing programs or facility license or both, the applicant shall be scheduled for a preadmission screening by appropriate staff.

d. If planned admission is to a Title XIX certified area, the PASARR must be completed and approval obtained prior to admission.

801—10.5(35D) Applicant's responsibilities. Prior to admission to IVH, the applicant or a person acting on the applicant's behalf shall:

10.5(1) Report any change in the applicant's condition that could affect the previously determined level of care.

10.5(2) Report changes in mailing address, county or state of residency.

10.5(3) Provide additional information, verification or authorization for verification concerning the applicant's circumstances, condition of health, and resources if required.

10.5(4) Participate in a preadmission evaluation for level of care if required.

801—10.6(35D) Admission to IVH.

10.6(1) The applicant shall be notified by the director of admissions or designee to appear for admission to IVH.

10.6(2) Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

10.6(3) During the interview, the director of admissions or designee shall review the following items with the applicant or legal representative:

- a. The applicant's resources.
- b. The member support, billing process and banking services.
- c. The "Contractual Agreement," Form 475-0694.

10.6(4) In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

- a. Permission for Treatment, Form 475-0814.
- b. Financial Affidavit, Form 475-0839.

10.6(5) An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the "Contractual Agreement," Form 475-0694, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

10.6(6) Each member shall be placed on a unit providing the appropriate level and category of care based on individual needs.

a. A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level and category of care within the scope of its licensure.

b. Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

10.6(7) Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, 2.06, 2.07 and 2.09, November 4, 1992.

801—10.7 to 10.10 Reserved.

801—10.11(35D) Member rights.

10.11(1) Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, 481—Chapter 59 for members residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

10.11(2) A member has the right to share a room with the member's spouse when both member and spouse consent to the arrangement and both require the same level of care.

10.11(3) If a member is incompetent and not restored to legal capacity, or if the medical provider determines that a member is incapable of understanding and exercising these rights, the rights devolve to the member's legal representative.

10.11(4) In some cases, a member may be determined to be in need of a fiduciary or agent by the DVA, the Social Security Administration or by a similar funding source. In these cases the commandant or designee may serve as agent subject to Iowa Code section 135C.24. All rights and responsibilities regarding the financial awards shall devolve to the commandant or designee.

801—10.12(35D) Member responsibilities.

10.12(1) The member or legal representative has the responsibility:

a. To timely report the existence of or changes in the member's income, spouse's income, assets or marital status, including the conversion of nonliquid assets to liquid assets. The member shall also complete the change report which is enclosed with the monthly member support bill.

b. To apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, private pension programs, or any combination), and accept the available billing programs offered at IVH.

c. To provide information concerning the physical condition and, to the best of the member's knowledge, accurate and complete information concerning present physical complaints, past illnesses, hospitalizations, medications and other matters related to the member's health.

d. To report unexpected changes in the member's condition to the attending medical provider or other clinician.

e. To make it known if the member clearly comprehends a contemplated course of treatment and the member's role in that treatment. If a member feels that a particular treatment is of no benefit, the member is responsible for reporting this to staff so that other alternatives may be considered.

f. To participate in treatment planning, cooperate with the treatment team in carrying out the treatment plan, and to participate in the evaluation of the member's care.

g. To be considerate of the rights of other members and staff and control behavior in respect to smoking, noise, and number of visitors.

h. To treat other members and staff with dignity and respect.

i. To respect the property of other members, staff, and IVH. A member or legal representative may be held financially responsible for any property damaged or destroyed by the member.

j. To ask questions about anything that the member may not understand about the member's care or IVH.

k. To accept the consequences of the member's actions if the member refuses treatment or fails to follow prescribed care.

l. To follow the rules and regulations of IVH regarding member care and conduct as set out in subrule 10.40(1).

m. To keep scheduled appointments with staff. If unable to do so, the member is responsible for notifying appropriate staff.

n. To maintain personal hygiene, including clothing, and maintain personal living area based on the member's physical and mental capabilities.

o. To follow all fire, safety and sanitation regulations as established by IVH and applicable regulatory agencies.

p. To provide information and verification of resources. A member or legal representative must fulfill the member support obligation for member health care.

q. To carry Medicare Part B insurance if eligible. IVH shall buy the medical insurance portion of Medicare Part B if member is not eligible to receive Medicare Part B under Social Security.

r. To delegate to IVH the authorization to enroll the member in a prescription drug plan. The premium shall be deducted from the member's social security.

10.12(2) The member or legal representative is responsible for the full payment of the member's support charges within the calendar month that the monthly support bill is received. Failure to pay a monthly support bill within 30 days of issuance may result in discharge from IVH unless prior arrangements have been made.

10.12(3) In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

10.12(4) When a member temporarily needs a level of care that is not offered by IVH, the member shall be referred by IVH medical staff to a DVA medical center or to another medical facility. When a member goes to a DVA medical center, that member is responsible for the payment of any DVA charges except those charges exempted by the commandant.

a. If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, this coinsurance shall be used for the DVA medical center charges. IVH shall be responsible for all DVA medical center charges if the member does not carry coinsurance supplement.

b. If a member chooses a medical facility other than a DVA medical center or other medical facility as referred by IVH medical staff, the member is responsible for costs resulting from care at the medical facility chosen.

801—10.13 Reserved.

801—10.14(35D) Computation of member support. As a condition of admittance to and residency in IVH, each member is required to contribute toward the cost of that member's care based on that member's resources and ability to pay.

10.14(1) A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

10.14(2) Title XIX residents. If a member is certified as eligible and participating in the Title XIX program, the amount of payment shall be determined by the department of human services income maintenance worker.

10.14(3) Billable days (non-Title XIX). Billable days for members not participating in the Title XIX program shall be counted as follows:

- a. All days in the month for which the member received care (in-house).
- b. All days away from IVH on pass status.
- c. All furlough days in excess of the 15 free days up through the fifty-ninth furlough day. Any furlough days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.
- d. The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH.

801—10.15(35D) Per diems.

10.15(1) For members not participating in the Title XIX program, the per diem by which the billable days shall be multiplied shall be established as follows:

- a. *Nursing and infirmary levels of care.*
 - (1) The charge for care is the per diem submitted by IVH to department of human services for the Title XIX certified units as calculated in January and July of each year for the preceding six months.
 - (2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.
 - (3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.
- b. *Domiciliary level of care.*
 - (1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.
 - (2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.
 - (3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

10.15(2) Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed.

10.15(3) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The daily per diem charge shall be reduced by an amount equal to the “usual” Medicare premium calculated as a per diem. This offset shall be available only to members eligible for Medicare insurance.

10.15(4) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The member support charge shall be reduced in accordance with subrules 10.15(2) and 10.15(3), if applicable. The member shall then contribute all remaining available resources up to the charge for care.

Members receiving DVA pension and aid and attendance shall be considered as having used the amount equal to aid and attendance first in payment for their care at IVH.

10.15(5) Payment of support is due on the tenth of the month in which the monthly support bill is received, or ten business days after the member’s last income deposit for that month.

a. If payment is not received by IVH within 30 days following the due date, a notice of discharge may be issued.

b. If there are extenuating circumstances, the member or legal representative should meet with the commandant or designee to work out a schedule of payments.

801—10.16(35D) Assets. The following rules specify the treatment of assets, as defined in rule 10.1(35D), in the payment of member support as described in rule 10.14(35D). Only liquid assets shall be considered in the payment of member support.

10.16(1) For members living on Title XIX certified units who have applied for and are eligible to receive Title XIX medical assistance, rule 441—75.5(249A) shall apply. Financial eligibility for Title XIX shall be determined by the department of human services income maintenance worker.

10.16(2) For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance, the following rules apply:

a. Assets considered. The assets considered shall include all assets owned by the member, or if married, both the member and the spouse living in the community, except for the following:

(1) The homestead is exempt as follows: The exempt homestead is defined as the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. Contiguous means that portions of the homestead cannot be separated from the home by intervening property owned by others. However, the homestead is considered contiguous if portions of it are separated from the home only because of roads or other public rights-of-way. Property that is not exempt as part of the homestead shall be treated in accordance with the rules of this chapter.

The homestead, as defined, can retain its exempt status for a period of time not to exceed 36 months, while the member, spouse and dependents are temporarily absent, provided the following conditions are met:

1. There is a specific purpose for the absence.
2. The member, spouse or dependents intend to return to the homestead when the reason for the absence has been accomplished.
3. The member, spouse or dependents can reasonably be expected to return to the home during the 36-month time limitation.
4. If a person is an applicant at the time the homestead becomes vacant due to the absence of the applicant, spouse or dependents, the first month of the 36-month period is the month of admission to IVH.
5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.

6. Any homestead that does not qualify for this exemption or any homestead that is vacant for a period of time exceeding the 36-month limit shall be treated in accordance with subrule 10.16(3).

(2) Household goods, personal effects and motor vehicles.

(3) The value of any burial spaces held for the purpose of providing a place for the burial of the member, spouse or any other member of the immediate family.

(4) Exempt income-producing property includes, but is not limited to, tools, equipment, livestock, inventory and supplies, and grain held in storage.

(5) Other property essential to the means of self-support of either the member or spouse as to warrant its exclusion under the Supplemental Security Income program.

(6) Assets of a blind or disabled person who has a plan for achieving self-support as determined by the division of vocational rehabilitation or the department of human services.

(7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights.

(8) Any amounts arising from Public Law 101-239 which provides assistance to veterans under the Agent Orange product liability litigation.

(9) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute as a result of a presidential disaster declaration and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.

(10) An amount that is irrevocable and separately identifiable, not in excess of \$8514 principal, without an itemized billing, for the member or spouse to meet the burial and related expenses of that person.

(11) Federal assistance paid for housing occupied by the spouse living in the community.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a member or spouse comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

(14) Any other asset excluded by statute.

b. Assets of a single member. When liquid assets not exempted in paragraph "a" above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

c. Assets of a married member with spouse in a care facility. If a member's spouse is residing in a nursing facility, including IVH, the member shall be treated as a single member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

d. Assets of a married member with spouse living in the community. When liquid assets not exempted in paragraph "a" above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be one-half of the documented assets of both the member and spouse living in the community as of the first day of admission to IVH after the first \$24,000 is exempted for the community spouse. However, if one-half of the resources is less than \$24,000 (the amount set by 441 IAC 75.5(3) "d" and "f," Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) If the member has transferred assets to the spouse living in the community under a court order for the support of the spouse, the amount transferred shall be the amount attributed to the spouse to the extent it exceeds the specified limits above.

(2) After the month in which the member is admitted, no attributed resources of the spouse living in the community shall be deemed available to the member during the continuous period in which the member is at IVH. Resources which are owned wholly or in part by the member and which are not transferred to the spouse living in the community shall be counted in determining member support. The assets of the member shall not count for member support to the extent that the member intends to transfer and does transfer the assets to the spouse living in the community within 90 days.

(3) Report of results. The department of human services shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 10.45(35D).

e. Exception based on estrangement. When it is established by a disinterested third-party source and confirmed by the commandant or designee that the member is estranged from the spouse living in the community, member support shall be determined on the basis of resources of a single member.

10.16(3) When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

a. Net market value, or equity value, is the gross price for which property or an item can be sold on the open market less any legal debts, claims or liens against the property or item. IVH shall consider the condition and location of an item or property and local market conditions in determining the gross sales price of the item or property. In order for a loan or claim to be considered a lien or encumbrance against an asset, the loan or claim must be made under circumstances that result in the creditors having a recorded legal right to satisfy the debt.

b. An asset must be available in order for it to be treated in accordance with the rules of this chapter. An asset is considered available when:

(1) The member owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold or otherwise used and disposed of at the member's discretion; and

(2) The member has a legal interest in a liquidated sum and has the legal ability to make the sum available for member support.

c. A member must take all appropriate action to gain title and control of any asset of which the value would affect the computation of member support.

d. The value of the asset may be adjusted if the member or legal representative:

(1) Advertises the asset for sale, through appropriate methods, on a continual basis.

(2) Lists the asset with a real estate broker or other agent appropriate to the asset.

(3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.

(4) Does not refuse a reasonable offer.

(5) Does not sell the asset for an unreasonably low price.

e. Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.

801—10.17(35D) Divestment of assets.

10.17(1) "Intentional divestment of assets" means:

a. To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or

b. To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

10.17(2) Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition

to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

a. Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

b. In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:

- (1) The fair market value of the compensation;
- (2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and
- (3) That the agreement, contract, or expectation was established at the time of transfer.

10.17(3) An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant's member support or of obtaining admission to IVH.

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant shall be charged member support as if divestment did not occur.

10.17(4) A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member shall be charged member support as if divestment did not occur.

801—10.18(35D) Commencement of civil action. The commandant or designee may file a civil action for money judgment against a member or discharged member or the member's legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

801—10.19(35D) Income. This rule describes the treatment of income, as defined at rule 10.1(35D), in the computation of member support as described at rule 10.14(35D).

10.19(1) For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the \$140 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

10.19(2) For members living on units which are not Title XIX certified and members living on Title XIX certified units who are not eligible for Title XIX, the following shall apply:

- a.* The following types of income are exempt in the computation of member support:
- (1) The earned income of the spouse or dependents.
 - (2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).
 - (3) Any other income that can be specifically identified as accruing to the spouse or dependents.
 - (4) Nonrecurring gifts, contributions or winnings, not to exceed \$60 in a calendar quarter.
 - (5) Interest income of less than \$20 per month from any one source.
 - (6) State bonus for military services.
 - (7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.
 - (8) Any money received by a member from the sale of items constructed or grown at IVH as part of a therapy program.
 - (9) The first \$125 received by a member in a month for participation in the incentive therapy or other programs as described at rule 10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$65 shall be exempted.
 - (10) Personal loans.
 - (11) In-kind contributions to the member.

- (12) Title XIX payments.
 - (13) Yearly DVA compensation clothing allowance for those who qualify.
 - (14) Other income as specifically exempted by statute.
 - (15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2) "a"(6) and (7).
 - (16) Income from participating as outlined in the community reentry program (IVH policy #265A) or the IVH discharge planning policy (IVH policy #265).
 - b. Personal needs allowance. All members shall have a monthly income intended to cover the purchase of clothing and incidentals.
 - (1) All income up to the first \$140 shall be kept as a personal needs allowance.
 - (2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.
 - c. Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 10.14(35D).
 - d. Determining income from property.
 - (1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.
 - (2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.
 - e. The amount of income to consider in the computation of member support shall be as follows:
 - (1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.
 - (2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.
 - (3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.
 - (4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.
 - (5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.
- 10.19(3)** Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:
- a. Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.
 - b. Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3) "a."
 - c. Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

d. Spouses living in a residential care facility. Spouses shall be treated under the same rules as a spouse living in the community in accordance with paragraph 10.19(3) "a."

e. All current court order proceedings and guardian/conservatorship appointments regarding financial obligations, except child support or alimony, shall be honored.

10.19(4) Income disbursements.

a. All monthly diversions to spouse or valid court orders shall be mailed as designated or on a monthly basis.

b. All checks shall be mailed no later than the eighth day of any given month to proper recipient or, at IVH's option, five business days after the member's last income deposit for that month.

c. Monthly income disbursements to a community spouse may be delayed or canceled if there is an overdue amount owed for support payments.

801—10.20(35D) Other income.

10.20(1) When a member receives regular monthly payments of unearned income, it shall be included in the resources available for the payment of member support.

10.20(2) When a member receives periodic recurring income which is received less frequently than monthly, this countable income, after the deduction of any allowable income-producing expenses, shall be considered in the month received.

10.20(3) When a member receives a nonrecurring retroactive payment from a specific entitlement source for a prior period of time, it shall be considered as income in the month received. The aid and attendance amount of the DVA pension shall be computed as a manual adjustment (available to member due to IVH nursing care).

10.20(4) Income from a particular source is considered terminated as of the date the member receives the last income payment from that source or the date that a sole or partnership enterprise ends, whichever is later.

10.20(5) When income from a particular source decreases in a calendar month, the decrease in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be decreased as of the date the member receives the first income payment in the decreased amount.

10.20(6) When income from a particular source increases in a month, the increase in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be increased as of the date the member receives the first income payment in the increased amount.

10.20(7) Recurring lump-sum payments shall be treated as income in the month received.

10.20(8) Nonrecurring lump-sum payments earned prior to admission, regardless of when received, shall not be counted as income but may be considered as an available liquid asset.

10.20(9) Any income as defined in rule 10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 10.16(35D).

10.20(10) Through IVH programs, employment is only allowed in the community reentry program (IVH policy #265A) or the IVH discharge planning policy (IVH policy #265).

801—10.21(35D) Fraud. Applicants, members or legal representatives who knowingly conceal the existence of resources may be subject to the billing of full member support, discharge for failure to pay for member's care or denial of admission. Further, members who knowingly conceal liquid assets or income which would have affected member support shall be charged for the amount not previously billed due to the fraudulent act. If upon admission it is determined that medical or other pertinent information provided during the application process was fraudulent, notice of discharge may be issued. In addition, any applicant, member or legal representative suspected of fraud may be referred to the department of inspections and appeals, division of investigations, for possible criminal or civil action. The attorney general's office shall conduct the investigation.

801—10.22(35D) Overcharges. When it is discovered that a member was charged for support in excess of the amount actually due, the member shall receive a refund or credit to the member's account. If the member is discharged or deceased, a refund shall be conveyed to the member or legal representative.

801—10.23(35D) Penalty.

10.23(1) All members who have resources in excess of the full support rate shall be charged the full member support rate. If any member does not apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, or any combination), fails to report resources accurately in order to not pay full support, or refuses to accept the available billing programs offered at IVH, that member shall be charged up to full member support as if these responsibilities had been followed. Failure to comply with these rules may result in discharge from IVH.

10.23(2) If a member is required to pay full member support under these rules, the monthly charge shall be calculated as the per diem in paragraph 10.15(1) "a" or 10.15(1) "b" times the billable days less any offsets. The only exception to this monthly charge will be the additional amount of aid and attendance in the DVA retroactive payment for the time period of nursing care at IVH. This amount, in total, shall be due regardless of resources available. If a member is required to pay member support based on additional resources, these figures shall be obtained from the appropriate agencies.

801—10.24 to 10.29 Reserved.

801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs. Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage, and Hour Division, and the commandant or designee if members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).

801—10.31 to 10.34 Reserved.

801—10.35(35D) Handling of pension money and other funds. Each member who has not been assigned a guardian, conservator, fiduciary or representative payee or has not designated a power of attorney while competent or as otherwise specified, may manage that member's own personal financial affairs. Upon the receipt of written authorization from the member or legal representative to the commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

10.35(1) Pension money or other funds deposited with IVH are not assignable except as specified at subrule 10.19(3) or 10.40(2) "b"(1).

10.35(2) If authorized by a member, the commandant or designee may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source subject to the requirements of Iowa Code section 135C.24. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(3) IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member's personal deposits individually and shall deposit the funds in the membership account where the members' deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month.

10.35(4) If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or

legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

10.35(5) The commandant or designee shall maintain a written record of each member's funds which are received by or deposited with IVH. The member or legal representative shall receive a monthly statement showing deposits, withdrawals, disbursements, interest and current balances. If the commandant or designee is made representative payee for the member's financial transactions, this statement shall be maintained in the member's administrative file.

10.35(6) Except as otherwise specified, funds deposited with IVH shall be released to the member or legal representative upon request with a statement showing deposits, disbursements, interest, and the final balance at the time the funds are withdrawn. When the member continues to maintain residency at IVH, the funds shall be released and statement provided within three working days following the request. When a member is being discharged from IVH, the funds shall be released and a statement provided no later than the tenth day of the month following the month of discharge.

10.35(7) Upon the death of a member with personal funds deposited with IVH, IVH must convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. If probate papers are produced, a final accounting of those funds must also be provided to the individual administering the member's estate. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.

This rule is intended to implement Iowa Code sections 35D.11(2) and 35D.12(2).

801—10.36(35D) Passes, furloughs, and room retention.

10.36(1) *Non-Title XIX members.*

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Furlough Against Medical Advice," Form 475-0940.

b. Passes are required if the member expects to be absent past midnight. A pass shall not exceed 96 hours. If a member expects to be gone more than 96 hours, a furlough is required.

c. Upon return from a pass or furlough, the member must spend 24 hours in residence at IVH before another pass or furlough is issued. The commandant or designee may, in an emergency situation such as family illness or death, grant exceptions.

d. All furloughs other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. Furlough length may be changed by notification from the member or legal representative to the nursing unit social worker or domiciliary office.

e. Medical furloughs. Furloughs spent in approved medical facilities away from IVH shall not be counted against the 59-day furlough time limit as set out in paragraph 10.14(3) "c."

Hospital furloughs shall be granted and the charges for such furloughs shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged from IVH shall have the account closed before the first of the month following the discharge.

Furloughs to other medical facilities for the purpose of treatment shall be treated as hospital furloughs.

f. General furloughs.

(1) Fifteen days of furlough time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for furlough time over 15 days up to and including 59 days.

(3) The member shall be charged the full member support for the level of care in which the member resides for furlough time over 59 days.

(4) Free time and other furlough time are not cumulative from one calendar year to another calendar year.

(5) Free time the member has not utilized or cannot utilize shall not be credited toward the member's support.

(6) Support charges for the member on furlough wishing to retain the member's room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1)"d."

g. When a member is on pass, the member shall remain on in-house status for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

h. When a member is on furlough, IVH is not financially responsible for any medical charges for the member.

10.36(2) Members who are receiving Title XIX benefits.

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge/Furlough Against Medical Advice," Form 475-0940.

b. A pass or furlough as set out in paragraph 10.36(1)"b" (whichever is appropriate) is required if a member expects to be absent past midnight. Free time does not apply to Title XIX members.

c. The member's bed shall be held while the member is visiting away from IVH for a period not to exceed 18 days in any calendar year. There is no restriction as to the amount of days taken in any one month or during any one visit, as long as the days taken in the calendar year do not exceed 18. Additional days shall be allowed if the member's medical provider recommends in the plan of care that additional days would be rehabilitative.

d. A member or a legal representative who wishes to exceed the 18 visitation days and retain the member's bed, but does not have medical provider recommendation for an extension, must make arrangements with the director of admissions or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

e. A bed shall be held for a hospitalized member. The member's client participation shall be paid according to the department of human services' income maintenance worker for all hospitalized days until member returns or is discharged.

f. IVH is not financially responsible for any medical charges for the member when visiting away from IVH.

801—10.37 to 10.39 Reserved.

801—10.40(35D) Requirements for member conduct. The commandant shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant may transfer or discharge any member from IVH when the commandant determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

10.40(1) In addition to the member responsibilities as set out in rule 10.12(35D), each member shall also comply with the following requirements:

a. The use of intoxicants or alcoholic beverages on IVH premises is prohibited unless prescribed by a medical provider.

b. The bringing of alcoholic beverages or illicit substances on IVH premises is prohibited. Any illicit substances or drug paraphernalia or both found in the member's possession shall be grounds for immediate discharge.

c. The use of illegal substances while a member of IVH is prohibited. A urinalysis shall confirm the presence of illegal substances. A member's refusal to submit to a urinalysis in response to a request based on probable cause shall be considered a positive result and is grounds for discharge.

d. Firearms or weapons of any nature shall be turned in to the adjutant or designee for safekeeping. The adjutant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

e. Smoking in members' rooms is prohibited. Members who smoke shall do so within designated smoking areas so as not to endanger self or others.

f. Continuously disruptive behavior on the part of a member, such as fighting with other members, visitors or staff, assault or theft, is grounds for transfer or discharge.

g. Members shall comply with legal requests and orders of the commandant or designee.

h. Members shall not violate state and federal statutes.

i. Members shall report to the director of admissions or designee any changes in assets/income, and pay support by the tenth of each month.

10.40(2) When a member is found in violation of the requirements of conduct established in subrule 10.40(1), the following steps may be taken:

a. A period of counseling from an appropriate staff member.

b. IVH control of the member's personal funds as follows:

(1) The pension money and other incomes and available liquid assets shall be deposited by the commandant or designee in a separate account for and on behalf of the member. The commandant or designee shall, under the procedures established in subrules 10.35(3) and 10.35(4), make withdrawals and disbursements to meet the regular bills and other expenses of the member.

(2) If, after a period of up to six months, the member's behavior is deemed appropriate by the facility, the handling of funds will be reviewed, and funds may be returned to the member.

(3) If the member is discharged from IVH, the balance of the deposit shall be paid to the member or financial legal representative within 30 days of discharge.

c. Discharge from IVH in accordance with subrule 10.40(3).

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. In an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, department of inspections and appeals, and the department of elder affairs long-term care ombudsman to ensure that the member shall not be in danger of health, safety or welfare upon release.

10.40(4) A member who has been previously discharged under the provisions of subrule 10.40(2) or 10.40(3) shall be readmitted to IVH only upon the approval of the commandant or designee. If not approved, the applicant shall receive written notice of the denial. A copy of the denial notice shall be forwarded to the commission and the appropriate county commission of veterans affairs. Any decision to deny readmittance is subject to the review of the commission.

801—10.41(35D) County of settlement upon discharge. A member does not acquire legal settlement in the county in which IVH is located unless the member is voluntarily or involuntarily discharged from IVH, continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH.

801—10.42(35D) Disposition of personal property and funds.

10.42(1) A discharged member shall remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the

member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

10.42(2) Following written notification to the legal representative or first next of kin, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative or first next of kin, the property may be shipped to the legal representative or first next of kin at the expense of the estate, legal representative, or first next of kin.

10.42(3) Upon death of a member with personal funds deposited at IVH, IVH shall convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH shall attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

801—10.43 and 10.44 Reserved.

APPEAL PROCESS

801—10.45(35A,35D) Applicant appeal process. An applicant who believes that any of the provisions of 801—Chapter 10 have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant containing a statement of the grievance and requested action. The commandant shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

801—10.46(35A,35D) Member appeal process. A member who believes that any of the provisions of 801—Chapter 10 have not been upheld or have been upheld unfairly may file an appeal.

10.46(1) A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the director of resident and family services.

10.46(2) If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the director of resident and family services within five working days of the discussion with the member. The director of resident and family services shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

10.46(3) If the member is not satisfied with the decision of the director of resident and family services, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant within ten working days of the decision of the director of resident and family services or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the director of resident and family services shall be attached to the grievance statement, if applicable. The commandant shall investigate the grievance and may hold an informal hearing with the member, director of resident and family services, and other involved individuals. The commandant shall notify the member and the director of resident and family services of the decision in writing within ten working days of receipt of the grievance.

10.46(4) If the member is not satisfied with the decision of the commandant, or if no decision is given within the time limits specified in subrule 10.46(3), the member may appeal to the commission within ten working days of the commandant's decision. The member and commandant shall be notified in writing within five working days of the commission's receipt of the appeal. The commission shall schedule a hearing with the member, commandant, and other involved individuals to determine the facts and make a final decision.

10.46(5) The member may appoint any individual to represent the member in the appeal process, at the member's expense.

10.46(6) No reprisals of any kind shall be taken against a member for filing an appeal.

10.46(7) The member may obtain judicial review of the commission's final decision in accordance with Iowa Code chapter 17A.

10.46(8) The time limits specified in the above subrules may be extended when mutually agreed upon by the persons involved in the appeal process.

Rules 10.45(35A,35D) and 10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

801—10.47 to 10.49 Reserved.

GROUND AND FACILITY ADMINISTRATION

801—10.50(35D) Visitors. Visitors are welcome to IVH subject to the following conditions:

10.50(1) Member visitation hours are from 8 a.m. to 11 p.m. daily. Visiting hours may be extended on an individual basis with the approval of the commandant or designee.

10.50(2) Visitors are subject to the policies and procedures as established by IVH rules.

10.50(3) Tours of IVH may be arranged by contacting the commandant or designee.

10.50(4) Firearms, drugs, or alcoholic beverages are permitted on IVH grounds only with the permission of the commandant or designee.

10.50(5) Any disruptive behavior on the part of a visitor shall result in modification, denial or termination of visiting privileges.

10.50(6) Trespass. Visitors shall not enter IVH grounds with the intent to commit a public offense, remain upon the grounds or in IVH buildings without justification after being notified or requested to abstain from entering, or to remove or vacate therefrom by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of IVH and its grounds.

10.50(7) Any visitor violating any of the rules within this chapter may be restricted from IVH for a period of time to be determined by the commandant or designee.

801—10.51(35D) Mail.

10.51(1) Each competent member shall be afforded a choice in the methods of handling the member's business mail and in meeting the member's responsibilities for reporting resources for computation of member support purposes. A member found to be mentally incompetent shall have that member's business mail handled in a manner as to respect that member's dignity and still meet the needs of IVH for complete information regarding resources.

10.51(2) Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

a. Elect to receive all business mail personally and provide the admissions office with financial documentation, or

b. Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the director of admissions or designee.

801—10.52(35D) Interviews and statements.

10.52(1) Releases to the news media shall be the responsibility of the commandant or designee. Authority for dissemination and release of information shall be designated to other persons at the discretion of the commandant or designee.

10.52(2) Interviews of members within IVH by the news media or other outside groups are permitted only with the prior written consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

801—10.53(35D) Donations. Donations of money, clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

801—10.54(35D) Photographing and recording of members and use of cameras.

10.54(1) Photographs and recordings of members within IVH by news media or other outside groups are permitted only with the prior written consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

10.54(2) Every effort shall be made to preserve the inherent dignity of the member and to preclude exploitation or embarrassment of the member or the family of the member.

801—10.55(35D) Use of grounds and facilities.

10.55(1) Persons wishing to use the facilities and grounds for civic purposes, programs for members, meetings, and similar purposes, must contact the commandant or designee at least two weeks in advance of the requested date. The commandant or designee may disapprove a request when the requested facilities are scheduled for use by or for the members, or when the activity would disrupt the normal operation of IVH. Previous arrangements to use the facilities or grounds may be canceled by the commandant or designee in the event of an emergency or when changes in the schedule require the use of the facilities or grounds for the members. Persons who use the facilities or grounds shall be held responsible for leaving the facilities or grounds in satisfactory condition and for any damages caused by or resulting from use.

10.55(2) Members of outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

801—10.56(35D) Nonmember use of cottages. Cottages may be made available to persons on the staff of IVH or to other members of the public with the commandant's approval and at the established rate.

10.56(1) Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges to the visitor as determined by IVH.

10.56(2) Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

10.56(3) Pets are not allowed inside the cottages. Visitors may maintain portable pet kennels outside.

801—10.57(35D) Operating motor vehicles on grounds.

10.57(1) The operator of a motor vehicle shall have a valid license for the type of vehicle being driven upon IVH grounds.

10.57(2) All persons operating a motor vehicle on IVH grounds shall comply with the applicable state and local laws and IVH policies.

10.57(3) No driver of a motor vehicle or motorcycle shall disobey the instructions of any traffic-control device, warning, or sign placed.

10.57(4) No person shall drive any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property. The person operating the motor vehicle or motorcycle shall have same under control and shall reduce the speed to 20 miles per hour on IVH grounds and reduce the speed to a lower, reasonable rate when approaching and passing a person walking in the traveled portion of a street.

10.57(5) No person shall stop, park, or leave standing any type vehicle in established fire lanes, emergency vehicle areas, and other essential lanes. No person shall park any type vehicle on roadways.

10.57(6) No person shall leave any type vehicle unattended by not locking doors or removing keys.

10.57(7) Failure to comply with rules may cause limitation or curtailment of driving privileges on IVH grounds for an indefinite period.

10.57(8) Motor vehicles belonging to members may be parked in member-designated parking on IVH grounds.

This chapter is intended to implement Iowa Code subsection 35A.3(4) and chapter 35D.

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CHAPTER 11
INJURED VETERANS GRANT PROGRAM

2006-2007 PROGRAM GUIDELINES

801—11.1(35A) Purpose. The purpose and legislative intent of this program are to provide immediate financial assistance to an injured veteran during recovery and rehabilitation from an injury or illness received in the line of duty in a combat zone or in a designated hostile fire zone after September 11, 2001.

801—11.2(35A) Grant amounts. Grants will be paid by the Iowa department of veterans affairs in increments of \$2,500 up to a maximum of \$10,000 in the following manner:

\$2,500	When veteran is medically evacuated from the combat zone.
\$2,500	30 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation services by the military or Veterans Administration.
\$2,500	60 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation services by the military or Veterans Administration.
\$2,500	90 days after evacuation date if still hospitalized, receiving medical treatment or rehabilitation services by the military or Veterans Administration.

801—11.3(35A) Eligible veterans.

11.3(1) For purposes of this program, the term “veteran” means:

a. A resident of this state who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served on active duty at any time after September 11, 2001, and, if discharged or released from service, was discharged or released under honorable conditions; or

b. A nonresident of this state who is or was a member of a national guard unit located in this state prior to alert for mobilization who has served on active duty at any time after September 11, 2001, was injured while serving in the national guard unit located in this state, is not eligible to receive a similar grant from another state for that injury, and, if discharged or released from service, was discharged or released under honorable conditions.

11.3(2) In addition to the requirements set out in subrule 11.3(1), an eligible veteran must meet all of the following conditions:

a. The veteran must have sustained an injury or illness in a combat zone or hostile fire zone; and
b. The injury or illness was serious enough to require medical evacuation from the combat zone; and

c. The injury or illness was or is considered by the military to have been received in the line of duty, based upon the circumstances known at the time of evacuation.

11.3(3) The veteran shall remain eligible for the grant after discharge from the military so long as the veteran continues to receive medical treatment or rehabilitation services for the specific injury or illness.

11.3(4) The commission may consider a request for a waiver of any of these requirements only pursuant to the provisions of Iowa Code section 17A.9A.

801—11.4(35A) Notification and application procedures.

11.4(1) *Retroactive application to September 11, 2001.*

a. The department will accept a consolidated roster of eligible injured veterans from a “flag officer level command” or a central casualty notification agency of the responsible service component as long as the roster includes the following information for each veteran:

- (1) Veteran’s name, rank, and social security number.
- (2) Mailing address for check disbursement.
- (3) Telephone numbers, including day, evening, and cell phone.

- (4) Combat theater served.
- (5) Date on which veteran was medically evacuated from combat theater.
- (6) Date on which medical or rehabilitative treatment was terminated. If the veteran is still receiving treatment, “inpatient” or “outpatient” shall be noted on the form.
- (7) Contact information for the agency submitting the consolidated roster, including point of contact (POC), telephone numbers, and E-mail address.

b. A veteran filing for the grant under retroactive eligibility must submit an injured veteran grant application form along with supporting documents. Supporting documents needed to verify eligibility shall include copies of the following:

- (1) Military ID card;
- (2) DD214 (if the veteran has been discharged) or military orders to document service in a combat zone;
- (3) Medical records to document date of medical evacuation and periods of continued medical treatment or rehabilitation; and
- (4) Any document to establish Iowa residency at the time of injury, such as Iowa income tax forms, or to establish that the veteran is or was a member of a national guard unit located in this state prior to mobilization and was injured while serving in that national guard unit and is not eligible to receive a similar grant from another state for that injury.

A veteran may receive assistance in the application process by contacting the department office at (515)242-5331 or (800)838-4692 or by fax (515)242-5659.

11.4(2) *Process for present and future injured veterans.*

a. The department will establish contact with the appropriate level of command or the casualty assistance office of each military service component to develop a combat casualty tracking system. (For example, the adjutant general of Iowa serves as the command authority for providing the department with accurate data to track all combat injured veterans assigned to the Iowa national guard.)

b. When the department receives an official casualty notification from a designated service office that a veteran has been medically evacuated from a combat zone, the department will assign a case manager to serve as a point of contact for the next of kin designated on the veteran’s DD93. The case manager will, within 48 hours, confirm Iowa residency of the veteran or, in the case of a nonresident, confirm that the veteran is or was a member of a national guard unit located in this state prior to mobilization and was injured while serving in that national guard unit and is not eligible to receive a similar grant from another state for that injury and provide the department with the required data to disburse the first grant payment. The check will be made payable to the veteran and mailed or presented to the next of kin. The case manager will then maintain weekly contact with the service component and the next of kin to track the treatment progress of the veteran and ensure that subsequent grant payments are disbursed in a timely manner.

c. Grant payments will be stopped if the veteran is returned to duty or when medical or rehabilitative treatment is discontinued.

801—11.5(35A) Taxability. An injured veterans grant is exempt from Iowa income tax since the intent of the grant is to reimburse a veteran for family travel and lodging costs during the veteran’s medical treatment and rehabilitation.

These rules are intended to implement Iowa Code section 35A.14 as amended by 2007 Iowa Acts, House File 767.

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CHAPTER 12
COUNTY GRANT PROGRAM FOR VETERANS

801—12.1(82GA,SF2425) Purpose. 2008 Iowa Acts, Senate File 2425, section 4, subsection 3, enacts the county grant program for veterans. The purpose and legislative intent of this grant program is to improve delivery of services by the various county commissions of veteran affairs to veterans in their respective counties. Grants will be awarded annually to counties pursuant to an appropriation by the general assembly to the Iowa department of veterans affairs to fund this program.

801—12.2(82GA,SF2425) Grant amounts. The Iowa department of veterans affairs shall award grants in amounts up to a maximum of \$10,000 to each county submitting an application that is approved by the department. In order to qualify for a grant, a county must agree to expend the amount of the approved grant on providing services to living veterans and must agree to maintain its current level of spending.

801—12.3(82GA,SF2425) Application procedure. Counties that wish to apply for a grant shall submit an application provided by the department to the Iowa Department of Veterans Affairs, Camp Dodge, Building A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131. Applications will be accepted up to May 15 of each year for a June 1 approval. Applications received after May 15 will be approved strictly on an emergency basis in cases in which the applying county has an identified need and distributed funds will be expended before the end of the fiscal year. Once the grant funding appropriated by the general assembly has been expended, the department will compile a list of grant applications, based on the date of receipt, for future approval if supplemental funding is provided. The application shall contain the following:

12.3(1) Application summary. The application summary shall consist of a brief description of the proposed project and the signatures of a member of the board of supervisors and a member of the county veteran affairs commission.

12.3(2) Narrative. The narrative shall explain the proposed project for which the funds will be used. The narrative must address the assessment factors listed in rule 801—12.4(82GA,SF2425). The assessment factors may be addressed in any sequence that is logical for the proposed project, but all factors should be identified and addressed. Any factors that are not addressed in the application may result in a reduced opportunity for funding of the project.

12.3(3) Proposed budget. The budget for the project shall be developed for the fiscal year in which the grant will be received. Beginning with the fiscal year 2008 grant program, recipients must expend grant funds during the fiscal year in which the grant was received. Funding for subsequent years shall be dependent upon future legislative appropriations. Beginning with the fiscal year 2009 grant program, grants may be awarded to supplement county spending on veterans affairs, but shall not supplant the previous year's expenditures. County maintenance of effort will be required, and the application should include the county commission of veteran affairs' budget and actual spending for the previous fiscal year, along with the proposed budget for the fiscal year in which the grant application is being made. Grant funding received from the Iowa department of veterans affairs shall not be included in the county's previous fiscal year expenditures for maintenance of effort purposes. For example, a county with a commission of veteran affairs budget of \$20,000 and actual expenditures of \$17,000 in fiscal year 2008 will be required to spend \$17,000 in fiscal year 2009 in order to meet the maintenance of effort requirement.

12.3(4) Letters of intent. If the proposed project involves additional funding from other sources, letters of intent to support the project are required from those additional sources.

801—12.4(82GA,SF2425) Assessment of applications. The Iowa department of veterans affairs will make decisions on applications based upon the following factors:

12.4(1) Need. The needs of the local veteran population that currently are not being addressed or that are not being addressed adequately are clearly identified.

12.4(2) Goals. The goals of the project are clearly outlined, and the sources of the services to be provided are clearly identified.

12.4(3) Results. A tentative time line for the delivery of the proposed services is included along with clearly identified quantitative measurements that will be used to determine the success of the grant in addressing the identified needs.

12.4(4) Innovation. The project addresses the implementation of new practices and methods for addressing the needs of the veteran community and improvement of delivery of services.

12.4(5) Accountability and project monitoring. The application demonstrates financial accountability and provides mechanisms to ensure proper evaluation of the project.

801—12.5(82GA,SF2425) Application decision. The director of the Iowa department of veterans affairs shall notify each county that submits an application of the department's decision regarding the county's application. An explanation of the reasons for the rejection of a project application and suggestions for improvement shall accompany application denials.

801—12.6(82GA,SF2425) Grant agreement. Each county that is awarded a grant will be required to enter into an agreement with the Iowa department of veterans affairs that specifies the reporting requirements. A written report shall be submitted to the department and shall be due 30 days following the end of the fiscal year in which the grant was received. The report shall provide an assessment of the project, including measurable outcomes such as increased opportunities to publicize veterans' benefits, the number of outreach visits conducted to allow veterans to apply for benefits, the number of applications for benefits filed as a direct result of the project, and increased opportunities for veteran involvement in local veterans' organizations. The report should also contain a final report on county spending for the fiscal year in which the grant was awarded.

801—12.7(82GA,SF2425) Appeals. Applicants that are dissatisfied with the decision of the Iowa department of veterans affairs may file an appeal with the Iowa commission of veterans affairs. The written appeal must be received within 15 working days of the date of the notice of decision; must be based on a contention that the process was conducted outside of statutory authority, violated state or federal law, policy or rules, did not provide adequate public notice, was altered without adequate public notice, or involved conflicts of interest by staff; and must include a request that the commission review the decision and the reasons for the appeal.

The Iowa commission of veterans affairs shall review the appeal at its next regularly scheduled meeting and shall issue a final decision.

801—12.8(82GA,SF2425) Recovery of funds. The treasurer of the state of Iowa shall be the entity charged with the recovery of grant funding from counties in the following circumstances:

12.8(1) Unspent funds. Counties not expending the entire amount of the grant by the end of the fiscal year in which the grant was received will be required to return the unspent portion to the state of Iowa.

12.8(2) Unauthorized use. Counties expending a portion of the grant on items that do not provide services to living veterans, or the immediate family of a veteran, will be required to return the unauthorized funds to the state of Iowa.

12.8(3) Maintenance of effort. Counties not maintaining their previous fiscal year's spending levels will have been seen as supplanting county funding with state grant funds. Counties not complying with their maintenance of effort will be required to return the supplanted portion to the state of Iowa.

These rules are intended to implement 2008 Iowa Acts, Senate File 2425, section 4, subsection 3.

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CHAPTER 13
VIETNAM CONFLICT VETERANS BONUS

801—13.1(35A) Bonus for persons serving in the Vietnam service area.

13.1(1) Service requirement. A person serving in the Vietnam service area is a person who served on active duty for not less than 120 days in the armed forces of the United States, and who served at any time between July 1, 1973, and May 31, 1975, both dates inclusive, and who at the time of entering into active duty service was a legal resident of the state of Iowa, and who had maintained the person's residence in this state for a period of at least six months immediately before entering into active duty service, and was honorably discharged or separated from active duty service, or is still in active service in an honorable status, or has been retired, or has been furloughed to a reserve, or has been placed on inactive status and was on active duty service in the Vietnam service area, within the dates specified in this subrule, if the veteran earned either a Vietnam service medal or an armed forces expeditionary medal Vietnam or can otherwise establish service in the Vietnam service area during that period.

13.1(2) Compensation. Compensation for persons who served in the Vietnam service area shall be as follows:

a. The amount of compensation shall be the sum of \$17.50 for each month that the person was on active duty service in the Vietnam service area, within the dates specified in subrule 13.1(1).

b. In addition, the person shall receive compensation at the sum of \$12.50 for each month that the person was on active duty service within the dates specified in subrule 13.1(1) and was not in the Vietnam service area. For example, a person who served six months in the Vietnam service area and six months not in the Vietnam service area will receive compensation for six months at \$17.50 per month, which is \$105, and six months at \$12.50 per month, which is \$75, for a total compensation payment of \$180.

c. Compensation under this subrule shall not exceed a total sum of \$500. Compensation for a fraction of a month shall not be considered unless the fraction is 16 days or more, in which case the fraction shall be computed as a full month.

801—13.2(35A) Bonus for persons serving outside the Vietnam service area.

13.2(1) Service requirement. A person serving outside the Vietnam service area is a person otherwise qualified under subrule 13.1(1) except that the person did not earn either a Vietnam service medal or an armed forces expeditionary medal Vietnam and did not serve in the Vietnam service area during the period between July 1, 1973, and May 31, 1975, both dates inclusive.

13.2(2) Compensation. Compensation shall be the sum of \$12.50 for each month that the person was on active duty service within the dates specified in subrule 13.2(1). Compensation under this subrule shall not exceed a total sum of \$300. Compensation for a fraction of a month shall not be considered unless the fraction is 16 days or more, in which case the fraction shall be computed as a full month.

801—13.3(35A) Other Vietnam veterans compensation.

13.3(1) Compensation from other states. A person is not entitled to compensation pursuant to this chapter if the person received from another state a bonus or compensation similar to that provided in this chapter.

13.3(2) Compensation from previous bonus. The maximum compensation a person may receive pursuant to this chapter shall be reduced by the amount of any Vietnam veterans bonus received from this state by that person for service prior to July 1, 1973. For example, if a veteran received compensation under the Vietnam veterans bonus authorized in 1973 Iowa Acts, House File 656, for service between July 1, 1958, and June 30, 1973, that compensation would be subtracted from the maximum amount permitted under this chapter in order to determine the amount of compensation the veteran may receive under this chapter. If the veteran received the maximum amount permitted, no compensation is payable under this chapter.

801—13.4(35A) Definition of active duty. “Active duty” means full-time duty in the armed forces of the United States, excluding active duty for training purposes only and excluding any period a person was assigned by the armed forces to a civilian institution for a course of education or training which was substantially the same as established courses offered to civilians, or as a cadet or midshipman, however enrolled, at one of the service academies.

801—13.5(35A) Survivor compensation. The surviving unremarried widow or widower, child or children, mother, father, or person standing in loco parentis, in the order named and none other, of any deceased person shall be paid the compensation that the deceased person would be entitled to pursuant to this chapter, if living. However, if any person has died or shall die, or is disabled, from service-connected causes incurred during the period and in the area from which the person is entitled to receive compensation pursuant to this chapter, the person or the first survivor as designated by this rule, and in the order named, shall be paid \$500 or \$300, whichever maximum amount would have applied pursuant to rule 801—13.1(35A) or 801—13.2(35A), regardless of the length of service.

801—13.6(35A) Persons not eligible for compensation. A person is not entitled to compensation pursuant to this chapter if the person was on active duty service after July 1, 1973, and the person refused to be subject to military discipline on conscientious, political, religious, or other grounds.

801—13.7(35A) Penalties. A person who knowingly makes a false statement relating to a material fact in supporting an application under this chapter is guilty of a serious misdemeanor. A person convicted under Iowa Code section 35A.8 as amended by 2007 Iowa Acts, Senate File 578, section 1, subsection 5c, shall forfeit all benefits to which the person may have been entitled under this chapter.

801—13.8(35A) Tax exemption. All payments and allowances made under this chapter shall be exempt from taxation, levy, and sale on execution.

801—13.9(35A) Application procedures and determination of eligibility.

13.9(1) Application procedures. Application shall be made on forms provided by the Iowa department of veterans affairs. Applications may be obtained from the department at the address listed in subrule 13.9(4) or from the department’s Web site at www.iowava.org. The applicant shall provide the information requested on the application and include any additional documentation required (for example, a copy of the applicant’s DD Form 214). The completed application, including documentation, shall be returned to the department at the address listed in subrule 13.9(4).

13.9(2) Department processing and investigation. The executive director of the Iowa department of veterans affairs will approve or disapprove the application.

13.9(3) Appeals procedure. Decisions of the executive director are subject to review by the commission pursuant to 801—Chapter 8, Contested Cases. Applicants may appeal the decisions of the commission as provided by Iowa Code section 17A.19.

13.9(4) Office address. Persons may contact the Iowa department of veterans affairs at Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824; telephone (515)242-5331 or 1-800-838-4692; fax (515)242-5659. The department’s Web address is www.iowava.org.

801—13.10(35A) Bonus restrictions and limitations. All bonuses under the program are subject to funding availability. Bonuses will be awarded in the order in which completed applications are received.

These rules are intended to implement Iowa Code Supplement section 35A.8(5) as amended by 2008 Iowa Acts, House File 2700, section 36.

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CHAPTER 14
VETERANS TRUST FUND

801—14.1(35A) Purpose. These rules establish the requirements for veterans or their spouses or dependents to receive benefits from the veterans trust fund.

801—14.2(35A) Definition. For purposes of this chapter, “veteran” means the same as defined in Iowa Code section 35.1, or a resident of Iowa who served in the armed forces of the United States, completed a minimum aggregate of 90 days of active federal service, and was discharged under honorable conditions.

801—14.3(35A) Eligibility. Veterans, their spouses, and their dependents applying for benefits available under subrules 14.4(1) through 14.4(6) must meet the following threshold requirements.

14.3(1) Income. For the purposes of this chapter, an applicant’s household income, excluding VA pension benefits and service-connected disability income, shall not exceed 200 percent of the federal poverty guidelines for the number of family members living in the primary residence in effect on the date the application is received by the county director of veterans affairs. Federal poverty guidelines shall be those guidelines established by the Iowa department of human services for the veteran’s family size. The commission shall adjust the guidelines on July 1 of each year to reflect the most recent federal poverty guidelines.

14.3(2) Resources. The department may not pay benefits under this chapter if the available liquid assets of the veteran are in excess of \$15,000. For the purposes of this chapter, “available liquid assets” means cash on hand, cash in a checking or savings account, stocks, bonds, certificates of deposit, treasury bills, money market funds and other liquid investments owned individually or jointly by the applicant and the applicant’s spouse, unless the applicant and spouse are separated or are in the process of obtaining a divorce, but does not include funds deposited in IRAs, Keogh plans or deferred compensation plans, unless the veteran is eligible to withdraw such funds without incurring a penalty. Cash surrender value of life insurance policies, real property, or a personal vehicle shall not be included as available liquid assets.

14.3(3) Funding from other sources. Applications shall not be approved if the applicant is eligible to receive aid from other sources to meet the purposes authorized in this chapter.

14.3(4) Additional requirements and limitations. Applicants must meet any additional requirements and are subject to any limitations which may be set out in this chapter or which may be established for a particular benefit.

801—14.4(35A) Benefits available. Applications may be approved for any of the following purposes.

14.4(1) Travel expenses for wounded veterans directly related to follow-up medical care. Travel expenses under this subrule include the cost of airfare, lodging, and a per diem of \$25 per day. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence the injury or disability is service-connected, the necessity of treatment in a particular facility, and documentation of expenses. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$1,000.

14.4(2) Job training or college tuition assistance for job retraining.

a. The commission may pay a veteran not more than \$3,000 for retraining to enable the veteran to obtain gainful employment. The commission may provide aid under this subrule if all of the following apply:

(1) The veteran is enrolled in a training course in a technical college or school or is engaged in a structured on-the-job training program.

(2) The veteran is unemployed or underemployed or has received a notice of termination of employment.

(3) The commission determines that the veteran’s proposed program will provide retraining that could enable the veteran to find gainful employment. In making its determination, the commission shall

consider whether the proposed program provides adequate employment skills and is in an occupation for which favorable employment opportunities are anticipated.

(4) The veteran requesting aid has not received reimbursement from any other retraining or education programs and the veteran does not have other assets or income available to meet retraining expenses.

b. The veteran shall provide such evidence as the commission may require to satisfy the requirements of this subrule.

14.4(3) *Unemployment assistance during a period of unemployment due to prolonged physical or mental illness or disability resulting from military service.* The commission may provide subsistence payments only to a veteran who has suffered a loss of income due to prolonged physical or mental illness or disability resulting from military service. The commission may provide subsistence payments of up to \$500 per month to a veteran on a month-to-month basis. No payment may be made under this subrule if the veteran has other assets or income available to meet basic subsistence needs. The veteran shall provide such evidence as the commission may require, which includes but is not limited to evidence that the mental illness or disability is service-connected and evidence that the veteran is unemployed for the period of payments. The maximum amount of aid payable in a consecutive 12-month period under this subrule is \$3,000.

14.4(4) *Expenses relating to nursing facility or home care.*

a. The commission may provide health care aid to a veteran residing in a long-term care facility or under a formal home health care agreement for dental care, including dentures; vision care, including eyeglass frames and lenses; and hearing care, including hearing aids.

b. The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed \$2,500 for dental care, \$500 for vision care, and \$1,500 per ear for hearing care.

c. The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of \$3,000.

14.4(5) *Benefits provided to children of disabled or deceased veterans.* The commission may provide a one-time payment of \$250 to minor children of veterans who were disabled as a result of injuries or illness incurred while on active federal service or \$1,000 to minor children of veterans who died as a result of injuries or illness incurred while on active federal service, following September 11, 2001. Minor children claiming eligibility due to the disability or death of a veteran shall submit, through the parent or guardian of the child, evidence from the appropriate military service indicating that the veteran died or was disabled as a result of injuries or illness incurred while on active federal service. For the purposes of this subrule, "children" means any biological child or any adopted child. The applicant shall provide such evidence as the commission may require to satisfy the requirements of this subrule.

14.4(6) *Individual counseling or family counseling programs.*

a. The commission may make mental health and family counseling available to veterans and their families. Individual family members are eligible for counseling.

b. The assistance may include appropriate counseling and treatment programs for veterans and their families in need of services.

c. Any assistance provided under this subrule shall not duplicate other services readily available to veterans and their families.

d. The maximum amount that may be paid under this subrule for any consecutive 12-month period shall not exceed \$2,500.

e. The commission may not provide counseling under this subrule unless the aid recipient's counseling service provider agrees to accept, as full payment for the counseling services provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the department determines the veteran is capable of paying. The department shall not pay for counseling under this subrule if the available liquid assets of the veteran are in excess of \$3,000.

14.4(7) *Family support group programs or programs for children of members of the military.*

a. The commission may award grants to unit family readiness/support groups, family support offices, and other such organizations providing support and programs to families and children of family members.

b. The grant shall be only for projects or programs which are not funded from any other source. The commission shall determine that the applicant's proposed project or program will provide the intended support. In making its determination, the commission shall consider whether the proposed program will provide anticipated favorable results.

c. The maximum amount of aid payable in a consecutive 12-month period under this subrule to a family readiness/support group is \$500.

14.4(8) *Honor guard services.*

a. The commission may reimburse veterans organizations for providing military funeral honors as follows:

(1) If a single veterans organization provides basic honors, \$25.

(2) If a single veterans organization provides full honors, \$50.

(3) If two or more veterans organizations participate in providing full honors and one of the organizations provides a firing detail, \$50. The organizations may request that the commission split the reimbursement.

(4) If two or more veterans organizations participate in providing basic honors, \$25. Payment shall be to one veterans organization, as determined by the commission.

b. Notwithstanding paragraph "a," the commission shall not reimburse a veterans organization if federal funding is available to reimburse the veterans organization for providing military funeral honors. The veterans organization shall request reimbursement from federal sources. If a veterans organization receives federal funding for providing military funeral honors at the reimbursement rate of one funeral per day, the department shall reimburse the organization for the provision of military funeral honors at any additional funerals on that day.

c. The maximum amount of aid payable in a consecutive 12-month period under this subrule to a veterans organization is \$500.

801—14.5(35A) Application procedure. Applications for benefits from the veterans trust fund may be obtained at any county veterans affairs office. The county director of veterans affairs shall date-stamp the application and submit it to the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824.

14.5(1) Application process. A person who wishes to apply shall complete an Application for Veterans Trust Fund form and provide such documentation or other evidence as the commission may require in order to determine the awarding or denial of the benefits available under this chapter.

14.5(2) Date of application. The date of the application shall be the date the signed application and written verification are received by the county director of veterans affairs.

14.5(3) Eligibility determination. The county director of veterans affairs or members of the county commission shall make a recommendation to the Iowa commission of veterans affairs as to whether to approve or deny the application. The Iowa commission of veterans affairs shall approve or deny all applications at its quarterly meetings as set forth in 801—paragraph 1.2(2) "a" or during a conference call for the sole purpose of voting on a trust fund expenditure. Applications must be approved by a majority vote of the commission membership. The director of the Iowa department of veterans affairs shall notify an applicant within 15 days of the commission's decision. An explanation of the reasons for rejection of an application will accompany denials.

14.5(4) Waiting list. After all veterans trust fund moneys have been obligated, the commission shall deny pending applications.

a. The denial notice shall state either that the applicant meets eligibility requirements but no funds are available and the applicant will be placed on the waiting list or that the applicant does not meet eligibility requirements.

b. Applicants not awarded funding who meet the eligibility requirements shall be placed on a statewide waiting list according to the order in which the completed applications and verification were received by the county commission of veteran affairs. In the event that more than one application is received at one time, the applicant shall be entered on the waiting list on the basis of the day of the month of the person's birthday, the lowest number being first on the waiting list. Any subsequent tie shall be decided by the month of birth, January being month one and the lowest number.

c. When funding allows additional applicants to be approved, their names shall be taken from the statewide waiting list, and their need and eligibility shall be redetermined at that time. An application packet, which includes instructions and necessary forms for verification of continuing eligibility, shall be sent to each applicant for completion. Packets shall be returned to the Iowa department of veterans affairs within time lines specified by the department. If the signed application and verification of continuing eligibility are not received by the time line specified by the department, the applicant shall not be considered for funding.

801—14.6(35A) Recovery of erroneous payments.

14.6(1) *Erroneous payments.* The commission may recover payments made as a grant under this chapter if any of the following apply:

- a. The information provided by the applicant is inaccurate.
- b. The commission incorrectly calculated the grant amount.
- c. The applicant is not entitled to a grant or is entitled to a lower grant amount as a result of a change in circumstances that affects the applicant's eligibility to receive the grant.

14.6(2) *Amount of recovery.* The commission may recover only the portion of the grant to which the applicant would not have been entitled if the correct information had been provided or if the grant had been properly calculated or as a change in circumstances warrants.

14.6(3) *Remedies.* The commission may request repayment of the amount due under subrule 14.6(2). In lieu of a lump-sum payment, the commission may enter into an agreement under which the applicant may repay the amount due within a 12-month period. If the applicant fails to repay the amount due within 30 days of a request for repayment or fails to comply with the terms of a repayment agreement, the commission may offset future grants that the applicant may be entitled to under this chapter until the amount due has been recovered. The commission may also suspend other benefits available to the applicant until the amount due has been recovered.

14.6(4) *Waiver.* The commission may temporarily or permanently waive its authority to recover payments under subrule 14.6(1) or suspend benefits under subrule 14.6(3) if the applicant's household income is totally exempt from Iowa garnishment law.

14.6(5) *Appeal.* Any commission decision under this chapter is subject to appeal under rule 801—14.7(35A).

801—14.7(35A) Appeal rights.

14.7(1) *Final agency action.* The approval or denial of an application by the commission shall be the final decision of the agency.

14.7(2) *Judicial review.* Judicial review of the commission's final decisions may be sought in accordance with Iowa Code section 17A.19.

These rules are intended to implement Iowa Code section 35A.13 as amended by 2007 Iowa Acts, House File 817, section 7.

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CHAPTER 15
VETERANS COMMEMORATIVE PROPERTY

801—15.1(37A) Purpose. Pursuant to Iowa Code section 37A.1, these rules establish the process for the sale, trade or transfer of veterans commemorative property.

801—15.2(37A) Definitions. For the purposes of this chapter, the following terms are defined as follows:

“*Cemetery*” means any area that is or was open to use by the public in general or any segment thereof and is used or is intended to be used to inter or scatter remains, including a pioneer cemetery as defined in Iowa Code section 523I.102. “*Cemetery*” does not include the following:

1. A private burial site where use is restricted to members of a family, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration;

2. A private burial site where use is restricted to a narrow segment of the public, if the interment rights are conveyed without a monetary payment, fee, charge, or other valuable form of compensation or consideration; or

3. A religious cemetery as defined in Iowa Code section 523I.102 that commenced business prior to July 1, 2005.

“*Department*” means the Iowa department of veterans affairs.

“*Veteran*” means a deceased person who served in the armed forces of the United States during a war in which the United States was engaged or served full-time in active duty in a force of an organized state militia, excluding service in the National Guard when in an inactive status.

“*Veterans commemorative property*” means any memorial as defined in Iowa Code section 523I.102, including a headstone, plaque, statue, urn, decoration, flag holder, badge, shield, item of memorabilia, or other embellishment, that meets all of the following criteria:

1. Is over 75 years old;

2. Identifies or commemorates any veteran or group of veterans, including any veterans organization or any military unit, company, battalion, or division; and

3. Has been placed in a cemetery.

“*Veterans organization*” means the Grand Army of the Republic, Sons of Union Veterans of the Civil War, Sons of Confederate Veterans, Veterans of Foreign Wars, Disabled American Veterans, United Spanish War Veterans, the Jewish War Veterans of the United States, Inc., the Catholic War Veterans, Inc., American Legion, American Veterans of World War II, Italian American War Veterans of the United States, Inc., or other corporation or association of veterans.

801—15.3(37A) Notification procedure.

15.3(1) Notification. Prior to the sale, trade or transfer of veterans commemorative property, a person who owns or controls a cemetery where veterans commemorative property has been placed shall provide notice to the department and obtain written authorization. Notification to the department shall be submitted for review on forms provided by the department 60 days prior to the proposed transaction date of the veterans commemorative property.

15.3(2) Notification forms. Notification forms may be obtained from the Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824, or from the department’s Web site at www.iowava.org.

801—15.4(37A) Transaction approval. Upon receipt of transaction notification and supporting documentation, the department shall take action on the request within a reasonable time frame not to exceed 60 days. The following criteria will be considered in evaluating a request:

15.4(1) Risk of deterioration. The department may authorize the sale, trade, or transfer of veterans commemorative property, if the veterans commemorative property is determined to be at risk of deterioration to a point where the veteran, group of veterans, or veterans organization that the property commemorates will be unrecognizable.

15.4(2) *Relocation of veterans commemorative property to a suitable location.* The department may authorize the sale, trade, or transfer of veterans commemorative property if the transaction will be made with an individual or organization that will preserve the current condition of the property and will display the property in a manner that will commemorate the veteran, group of veterans, or veterans organization for which the property was intended.

15.4(3) *To provide for the maintenance of cemetery property.* The department may authorize the sale, trade, or transfer of veterans commemorative property if the transaction is necessary to ensure that sufficient funds are available to maintain the cemetery where the veterans commemorative property is placed and the specific lot, plot, grave, burial place, niche, crypt, or other place of interment of a veteran or group of veterans.

15.4(4) *Veterans commemorative property will be suitably replaced.* The department may authorize the sale, trade, or transfer of veterans commemorative property if the property will be replaced at the same site, with a memorial that will continue to commemorate the veteran, group of veterans, or veterans organization that the original memorial was intended to honor.

15.4(5) *Donating veterans organization approval.* The department may authorize the sale, trade, or transfer of veterans commemorative property if the veterans organization that is believed to have donated the property consents to the transaction.

15.4(6) *Lending owner approval.* The department may authorize the sale, trade, or transfer of veterans commemorative property if the owner of the property authorizes the transaction and is aware the cemetery will retain the proceeds of the transaction.

801—15.5(37A) Appeals.

15.5(1) *Final department action.* Action taken on the application shall be the final decision of the department.

15.5(2) *Review.* Review of the department's final decision may be sought in accordance with Iowa Code section 17A.19. Written notice of appeal should be directed to the Executive Director, Iowa Department of Veterans Affairs, Camp Dodge, Bldg. A6A, 7105 NW 70th Avenue, Johnston, Iowa 50131-1824, within 30 days of receipt of final department action.

801—15.6(37A) Penalty. Engaging in the sale, trade, or transfer of veterans commemorative property without department authorization is punishable as a simple misdemeanor pursuant to Iowa Code section 37A.1(3).

These rules are intended to implement Iowa Code section 37A.1.

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