

ELDER AFFAIRS DEPARTMENT[321]

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

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CHAPTER 1
INTRODUCTION, ABBREVIATIONS AND DEFINITIONS

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

321—1.1(231) Authority and purpose. The rules of the Iowa department of elder affairs are based on the authority of Iowa Code chapters 231, 231B, 231C, 231D, 235B and 249H. These rules prescribe requirements:

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

321—1.2(231) Other regulations and order of precedence. These agency rules are based on the following federal and state regulations that are listed in the order of precedence which shall prevail in the event of conflicting or inconsistent requirements:

1. Older Americans Act of 1965.
2. Code of Federal Regulations, 5 CFR 900, Subpart F, August 14, 1979; 7 CFR 250, January 9, 1985; 28 CFR 89, March 2, 1976; 45 CFR Parts: 74, June 7, 1981; 80, December 4, 1964; 81, November 7, 1971; 84, May 4, 1977; 90, June 12, 1979; and 1321, April 1, 1985.
3. Federal Administration on Aging policy issuances and administration on aging program instructions.
4. Iowa Code chapter 231 and other Iowa Code chapters as given in 321 IAC 1.1(231) and other chapters as determined by the Iowa legislature.
5. Administrative rules published in the Iowa Administrative Code, promulgated under agency number 321.
6. Iowa aging program instructions issued by the department and signed by the director or the director's designee.

321—1.3(231) Applicability. The rules set forth in the chapters under the jurisdiction of the department of elder affairs apply to all grants awarded to any recipient through the department and to any entities regulated by the department. Compliance with these rules shall be mandatory, unless a waiver is granted in accordance with the procedure in 321 IAC 11.

321—1.4(231) Abbreviations. Abbreviations used in rules under agency number 321 are as given below unless defined and used differently in various chapters under the department's jurisdiction:

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

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

"CFR" means the Code of Federal Regulations.

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

"DEA" means the department of elder affairs established in Iowa Code chapter 231.

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

"IADL" means instrumental activities of daily living.

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

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

“*OAA*” means the Older Americans Act.

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

“*SLCU*” means the senior living coordinating unit as established in Iowa Code section 231.58.

321—1.5(231) Definitions. Words and phrases used in rules under agency number 321 are defined as below unless defined and used differently in the various chapters under the department’s jurisdiction. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

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

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

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

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

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

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

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

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

“*Commission*” means the commission of elder affairs.

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

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

1. Facilitate accessibility to and utilization of all supportive and nutrition services provided within the geographic area served by the system by any public or private agency or organization.
2. Develop and make the most efficient use of supportive services and nutrition services to meet the needs of elders with a minimum of duplication.
3. Use available resources efficiently and with a minimum of duplication; and
4. Encourage and assist public and private entities that have unrealized potential for meeting the service needs of older individuals to assist the elders on a voluntary basis.

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

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

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

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

“*Department of elder affairs*” or “*department*” means the sole state agency responsible for administration of the Older Americans Act and Iowa Code chapters 231, 231B, 231C, and 231D and other applicable laws or rules.

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

“*Director*” means the director of the Iowa department of elder affairs.

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

“*Elder*” means a person aged 60 or older.

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

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

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

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

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

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

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

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

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

“*Greatest economic need*” means the need resulting from an annual income level at or below the official poverty guideline as defined in IAPI issued by the department.

“*Greatest social need*” means the need caused by noneconomic factors, which include physical and mental disabilities, language barriers, and cultural, geographic or social isolation including isolation

caused by racial or ethnic status, that restrict an individual's ability to perform normal daily tasks or that threaten the elder's capacity to live independently.

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

"*In-home services*" means:

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

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

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

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

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

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

"*Long-term care resident's advocate program*" or "*LTCRAP*" means the statewide long-term care ombudsman program operated by the department of elder affairs pursuant to the federal Act and Iowa Code chapter 231.

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

"*Neglect*" (OAA) means the failure:

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

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

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

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

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

"*Provider*" means any person, company, firm, association or other legal entity that provides services as delineated in any chapter under agency number 321.

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

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

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

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

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

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

“*Senior living coordinating unit*” or “*SLCU*” means the senior living coordinating unit established in Iowa Code section 231.58.

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

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

1. “*Title III-B*” means requirements and funding for supportive services.

2. “*Title III-C*” means requirements and funding for nutrition services.

3. “*Title III-C(1)*” means requirements and funding for congregate nutrition services.

4. “*Title III-C(2)*” means requirements and funding for home-delivered nutrition services.

5. “*Title III-D*” means requirements and funding for disease prevention and health promotion.

6. “*Title III-E*” means requirements and funding for the National Family Caregiver Support program.

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

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

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

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[◇] Two or more ARCs

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CHAPTER 2
DEPARTMENT OF ELDER AFFAIRS

321—2.1(231) Mission statement. The mission of the department of elder affairs is to provide advocacy, information, educational and prevention services to elders so they may find Iowa a healthy, safe, productive and enjoyable place to live and work.

321—2.2(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise.

321—2.3(231) Department established.

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

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

- a. By mail addressed to: Director, Iowa Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319;
- b. By telephone at (515)725-3333; or
- c. From the Web site at <http://www.ia.state.us/elderaffairs>.

2.3(3) Business hours. Business hours for the department are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays established by the state executive council.

321—2.4(231) Director. The director's duties and responsibilities are established in Iowa Code chapter 231.

321—2.5(231) Organizational units of the department. The department's activities are performed by employees within the office of the director, two divisions and the office of elder rights. Grants will be managed by the appropriate division, office of the director or office of elder rights, dependent upon the source and intended use of funds.

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

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

- a. Coordinating, reviewing and processing the multiyear area plans from the area agencies on aging;
- b. Developing and processing the State Plan Funding Application to the federal government;
- c. Monitoring, assessing, evaluating and auditing the 13 area agencies on aging for general area plan performance;
- d. Maintaining accountability for all state, federal and local funds for which the department is responsible;
- e. Managing a variety of department administrative responsibilities (including but not limited to budget preparation, personnel activities, ordering supplies and purchasing equipment);
- f. Developing and maintaining computerized information systems which compile and analyze data to assess the quality and priorities of the department's programs; and
- g. Processing information for presentation in reports, pamphlets, brochures, videotapes and the news media.

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

- a. Developing program initiatives related to the department's mission;
- b. Reviewing and commenting upon laws, regulations, and rules that impact programs and services for elders;
- c. Program development related to:
 - (1) The continua of long-term care options;
 - (2) Case management program for the frail elderly;

- (3) Nutrition and health promotion;
- (4) Information and assistance;
- (5) Adult day and respite services;
- (6) Housing, including elder group homes and assisted living;
- (7) Access to public benefits;
- (8) Mature worker programs, including pension counseling; and
- (9) Caregiver programs;
- d. Providing customer services related to elders' rights issues;
- e. Monitoring and assessing services related to elder programs and advocacy issues;
- f. Outreach to elders in greatest need (minority, rural, low-income and persons with disabilities);
- g. Coordination and advocacy efforts which involve partnerships with a variety of public and private agencies; and
- h. Providing educational opportunities such as conferences, workshops and other means of informing elders and their caregivers.

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

- a. The office of the long-term care ombudsman which is responsible for all applicable duties contained within the federal Act and the duties as outlined in 321 IAC 8;
- b. Legal assistance development related to the department's mission and duties as outlined in 321 IAC 7;
- c. Elder abuse policy development, prevention, education and intervention and duties as outlined in 321 IAC 15; and
- d. Providing customer services related to elders' rights issues.

321—2.6(231) Staffing.

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

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

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

321—2.7(231) Discrimination. The department shall comply with 11 IAC 68, Equal Employment Opportunity and Affirmative Action, and associated provisions of federal and state law in all personnel actions. Any person who believes that the person has been discriminated against shall follow the appropriate procedures given in:

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

321—2.8(231) Affirmative action plans. The director shall comply with 11 IAC 68 and with the requirements of Section 900.607 of Title 5 of the Code of Federal Regulations (1981).

321—2.9(231) Department complaint and appeal procedures.

2.9(1) Aggrieved party identified. An aggrieved party is any agency, organization, or individual that alleges that the party's rights have been denied or that services provided were not in compliance with regulations or were substandard because of an action of the department, the commission of elder affairs, an AAA or an AAA subcontractor.

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

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

b. Local complaint procedures of an AAA or an AAA subcontractor shall be exhausted before the department of elder affairs is contacted.

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

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

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

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

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

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

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

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

(7) If the parties are unable to reach agreement during the informal review, the matter may, if requested, be handled by the department as a request for a contested case proceeding under Iowa Code chapter 17A and 321 IAC 13.

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

b. *Contested case proceeding.*

(1) Within 15 calendar days of receipt of a request for a contested case hearing, the department shall initiate a contested case proceeding under 321 IAC 13.

(2) If the controversy is a matter that is subject to a contested case proceeding under Iowa Code chapter 17A, parties may request a contested case proceeding at the conclusion of an unresolved informal review pursuant to 321 IAC 13.

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

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

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

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

321—2.10(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 231.

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CHAPTER 3
COMMISSION OF ELDER AFFAIRS
[Prior to 5/20/87, see Aging, Commission on the[20] Ch 2]

321—3.1(231) Definitions.

“*Commission*” means the commission of elder affairs.

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

321—3.2(231) Purpose of the commission. The purpose of the commission is to develop policy for the department of elder affairs for administration of the federal Act.

321—3.3(21,231) Organization of the commission and proceedings.

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

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

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

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

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

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

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

3.3(8) Dates and locations of commission meetings may be obtained from the department’s Web site at www.state.ia.us/elderaffairs or directly from the department by calling (515)242-3333.

321—3.4(231) Commission duties and authority. In addition to carrying out the duties outlined in Iowa Code Supplement section 231.14, the commission shall:

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

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

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CHAPTER 4
DEPARTMENT PLANNING RESPONSIBILITIES
[Prior to 5/20/87, see Aging, Commission on the[20] Chs 3 to 5]

321—4.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definition also applies to this chapter:

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

321—4.2(231) State plan on aging.

4.2(1) Authority. The Iowa department of elder affairs is designated as the sole state unit on aging in Iowa for the development and implementation of a state plan on aging under Section 305 (42 U.S.C. 3025) of the Act.

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

4.2(3) Process.

- a. The department shall hold at least one public hearing on the state plan.
- b. The commission shall consider and approve the state plan or state plan amendment prior to submittal to the governor for approval and signature.
- c. Each state plan or state plan amendment shall be signed by the governor and submitted to AOA to be considered for approval at least 45 calendar days before the effective date of the plan or the plan amendment.

321—4.3(231) Designation of PSA. Unless changed for reasons given in this chapter, the PSA boundaries shall remain the same as those existing on July 1, 1985.

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

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

- a. *Notice.* The department shall advertise the intent to alter existing boundaries and the availability of applications to serve as a PSA in the affected area by sending notice to all AAA, units of local government, and known groups of elders in the affected PSA.
- b. *Publication.* The department shall also publish a notice in at least one newspaper of statewide circulation and the official newspapers as designated for each county served by the affected PSA.
- c. *Time frame.* The notice shall be published a minimum of 50 days in advance of the deadline for submitting applications.
- d. *Deadline.* The notice shall state the precise deadline for requesting application packets as well as for submittal of completed applications.

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

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

- a. Meet the criteria established in the Act;

b. Conform to state law and rules promulgated by agencies having jurisdiction in the affected PSA.

4.3(5) Public hearing.

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

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

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

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

4.3(6) Department review of applications and comments.

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

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

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

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

4.3(8) Appeal.

a. Any applicant for designation as an AAA whose application is denied may appeal the decision pursuant to 321 IAC 13.

b. At the conclusion of the appeal under 321 IAC 13, if the AAA wishes to continue the appeal process, the final decision may be appealed in writing to the assistant secretary of the AOA within 30 calendar days of receipt of the decision.

321—4.4(231) Designation of AAA. Unless changed for reasons given in this chapter, the AAA designations shall remain the same as those existing on July 1, 1985.

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

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

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

321—4.5(231) Types of entities that qualify as an AAA.

4.5(1) Qualifications. In order to qualify for designation as an AAA, an entity must have the authority and capacity to perform the functions of an AAA and handle the responsibilities outlined in 321 IAC 5, 6 and 7.

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

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

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

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

1. An established office on aging which is defined as a legally incorporated entity with employed staff whose single purpose is to administer programs for elders.
2. An agency whose single purpose is to administer programs for elders.
3. A multipurpose agency as defined in 321 IAC 4.6(231).
4. Any public or nonprofit private agency in a PSA which can engage in the planning and provision of a broad range of supportive or nutrition services within the PSA, except any regional or local agency of the state.

321—4.6(231) Multipurpose entity. An AAA may be a multipurpose entity with the authority and capacity to administer human services in the PSA.

4.6(1) A multipurpose entity shall delegate all its authority and responsibility under the Act to a single organizational unit within the entity unless it applies for and receives a waiver of this requirement from the department under the authority and applicable procedures of 321 IAC 11 as a part of the application approval process.

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

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

321—4.7(231) Request for waiver.

4.7(1) A request seeking waiver of the requirement to delegate all authority and responsibilities under the Act to a single organizational unit shall be submitted pursuant to the requirements of 321 IAC 11.6(17A,231,ExecOrd11) and shall:

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

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

321—4.8(231) Applicant qualification and preference. The method for determining qualified applicants for AAA designation and for giving preference if there is more than one qualified applicant in any of the eligible applicant categories shall be in accordance with this chapter.

321—4.9(231) Procedure for designation of an AAA.

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

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

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

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

4.9(4) Public hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

321—4.10(231) Withdrawal of AAA designation. When an AAA cannot, or will not, fulfill its responsibilities as given in 321 IAC 5, the commission may withdraw the designation for reasons including but not limited to:

1. Substantial violation of grant terms and conditions or requirements and standards set forth in state law or rules promulgated by the department or other agencies having jurisdiction;
2. Inadequate performance of the responsibilities outlined in 321 IAC 5, 6, or 7 and any other chapters governing administration, operation and reporting for AAA;
3. The AAA's multiyear area plan is not approved by the commission;
4. Actual performance varies drastically from planned performance;
5. Financial instability;
6. Deficiency in implementation of programs;
7. Contractual or direct services to the elderly commenced more than two months after the approved project period;
8. Reporting of fiscal or performance data does not comply with written procedures issued by the department; or
9. The AAA has been unable or has refused to take timely remedial action to correct cited deficiencies within the given time frame established for correction.

321—4.11(231) Procedures for withdrawal of AAA designation.

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

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

4.11(2) The department shall give written notice to the AAA of the right to appeal the designation withdrawal pursuant to 321 IAC 13.

321—4.12(231) Department action subsequent to withdrawal.

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

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

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

- a. Perform the responsibilities of the AAA;
- b. Assign the responsibilities of the AAA to another agency in the PSA; or

c. Submit a written request to the AOA for an extension of the current AAA designation for up to 180 days. The request must document the need for an extension to provide continuity of services in the affected PSA.

321—4.13(231) Technical assistance. The department may provide assistance as follows:

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

321—4.14(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 231.

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CHAPTER 5
DEPARTMENT FISCAL POLICY

[Prior to 5/20/87, see Aging, Commission on the [20], rule 4.9 and Ch 9]

321—5.1(231) Definitions. Words and phrases as used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

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

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

“Local match” means the equivalent cash value of third-party in-kind contributions and cash resources, or both, made available by local sources (e.g., local public funds, other local cash, and program income) representing that portion of the costs of a grant-supported project or program not borne by the department.

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

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

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

“Third-party in-kind contributions” means property or services which benefit a grant-supported project or program and which are contributed by nonfederal third parties without a charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

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

321—5.2(231) Grants to area agencies on aging.

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

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

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

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

321—5.3(231) Limitations on use. Except as provided in this rule, the AAA shall use each allotment for its designated purpose.

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

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

5.3(3) AAA shall expend no less than the designated amounts, as given in 321 IAC 6, of their Title III-B allotment, less administration costs, for services in the priority service categories of:

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

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

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

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

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

321—5.4(231) Expenditures in rural areas. The department shall allot to rural areas at least 105 percent of the amounts the areas spent under Title III of the Act during the fiscal year 1978.

321—5.5(231) Funding formulas.

5.5(1) OAA federal funds—Title III.

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

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

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

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

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

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

321—5.6(231) State appropriations and case management allotments.

5.6(1) Elderly services. All state elderly services funds appropriated to the department, excluding those otherwise specifically identified in the appropriation, shall be allocated to AAA on the basis of persons aged 60 and older and minority persons aged 60 and older and double-weighted for persons aged 60 and older at or below the poverty level of income in the AAA planning and service area. Elderly services funds set aside for the case management program for the frail elderly shall be allocated on the basis of a \$45,000 block grant per AAA with the balance of funds allocated on the AAA's proportion of persons aged 60 and older.

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

- a. Shall triple-weight all of the following:
 - (1) Individuals aged 75 and older.

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

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

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

321—5.7(231) Program allotment calculations.

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

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

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

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

321—5.8(231) Funding estimates. It is the intent of the department to provide AAA with timely access to all allotments, whether actual or estimated, consistent with an orderly process of area plan revision and amendment. To implement the intent, the following procedures shall be followed:

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

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

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

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

321—5.9(231) Matching funds.

5.9(1) Financial participation.

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

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

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

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

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

5.9(4) Source of nonfederal share.

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

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

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

321—5.10(231) Allowable use of federal and state funds for multiyear area plan administration.

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

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

321—5.11(231) Reallotment.

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

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

321—5.12(231) Restriction on delegation of authority to other agencies. The department and area agencies on aging may not delegate to another agency the authority to award or administer funds pursuant to this chapter, except as provided in 321 IAC 4.

321—5.13(231) Records and reports.

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

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

321—5.14(231) State reviews and audits.

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

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

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

321—5.15(231) Acquisition of goods and services.

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

a. Purchase.

b. Lease or rental.

c. Donation.

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

a. Federal, state and local governmental agencies.

b. Public or private nonprofit organizations.

c. Persons as defined in Iowa Code section 4.1(20).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The item is available only from a single source; or

b. A public exigency or emergency creates an urgency for the item that will not permit delays incident to competitive selection; or

c. The federal grantor agency authorizes noncompetitive selection; or

d. After solicitation of a number of sources, competition is determined inadequate.

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

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

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

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

321—5.16(231) Restrictions for multipurpose agencies designated as AAA. When a multipurpose agency designated as the grantee for an AAA is the single organizational unit serving the designated planning and service area, no grant or contract is permitted between the AAA office and another division, officer or personnel of the multipurpose agency without the express approval of the department.

321—5.17(231) Records—contract administration. The department and AAA shall maintain the following records as applicable:

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

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

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

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

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

321—5.18(231) Recapture of funds for facilities.

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

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

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

5.18(3) *Recapture in leased facility.*

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

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

321—5.19(231) Property management.

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

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

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

These rules are intended to implement Iowa Code chapter 231.

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

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

CHAPTER 6
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

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

321—6.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

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

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

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

321—6.2(231) Area plan.

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

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

- a. The area plan shall be for the four-year period specified by the department, with annual updates.
- b. Uniform area plan format. All AAA shall submit an area plan or plan amendment to the department in accordance with the uniform area plan format, other instructions issued by the department, this chapter, and the federal Act.

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

- a. Facilitate access to and utilization of all existing services; and
- b. Develop supportive and nutrition services effectively and efficiently to meet the needs of elders.

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

- a. The federal Act;
- b. Older Americans Act Title III Regulations; Code of Federal Regulations, Title 45, Volume 4, Part 1200 (45 CFR 1321);
- c. This chapter;
- d. IAPI issued by the department.

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

- a. Assurance that the AAA agrees to abide by the requirements of the federal Act and all other applicable laws and rules; and
- b. Objectives and budget for each year of the designated four-year period and methods to obtain those objectives; and
- c. Client estimates. Area agencies shall estimate the number of elders with the characteristics identified in Form 3 A 1 of an IAPI.

6.2(6) Area plan amendments and revisions.

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

- (1) A new or amended state or federal statute, rule or regulation requires new information or conflicts with any existing plan provisions;
- (2) A United States Supreme Court decision changes the interpretation of a statute or rule;
- (3) Local law, organization, policy or agency operations change and are no longer accurately reflected in the area plan;
- (4) The department requires amendments;
- (5) The grantee proposes to change the designation of the single organizational unit or component unit responsible for programs under the federal Act or state law; or
- (6) The area agency proposes to add or delete a service category.

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

- (1) A department funding source to the area agency changes; or
- (2) A program requirement changes.

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

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

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

(2) The AAA shall advertise the hearing by sending notice to all known groups of elders, PSA public officials, and other interested parties. The AAA shall also publish a notice in the official newspapers as designated for each county served by the PSA. The notice shall include the time, date, and location of the public hearing.

b. Review and comment by the advisory council.

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

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

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

6.2(9) Appeals. Any person may appeal a denial of approval of an area plan, plan amendment or revision as provided in 321 IAC 4.

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

- a.* Affirmative action plan;
- b.* Table of organizational structure;
- c.* Inventory of nutrition sites and senior centers;
- d.* Listing of the area agency's designated community focal points; and
- e.* Listing of the officers of the AAA board of directors.

321—6.3(231) Area agency administration.

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

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

- a.* Ensure that all AAA duties as outlined in the federal Act, state law, this chapter and other rules promulgated by any agency having jurisdiction are performed;
- b.* Develop the area plan;
- c.* Implement organizational operations;
- d.* Budget for services and operations;
- e.* Coordinate implementation of services; and
- f.* Monitor and evaluate services.

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

6.3(4) Affirmative action plans. Each AAA shall develop an employment affirmative action plan which shall be submitted as part of the profile required in this chapter. All affirmative action plans shall comply with the requirements as given in IAPI.

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

321—6.4(231) Confidentiality and disclosure of AAA information.

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

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

321—6.5(231) AAA contact information. Information on how to contact the appropriate AAA office may be obtained by sending a request to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319; or by telephone at (515)725-3333; or by visiting the department's Web site www.state.ia.us/elderaffairs/.

321—6.6(231) Duties of AAA.

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

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

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

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

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

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

6.6(2) Additional duties include:

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

b. Submit all reports in accordance with IAPI of the department;

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

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

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

f. Coordinate planning by individuals, agencies and organizations interested in the prevention of abuse, neglect and exploitation of elders and assist in implementation of educational and awareness activities, in coordination with the long-term care resident's advocate program;

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

321—6.7(231) AAA board of directors.

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

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

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

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

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

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

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

321—6.8(231) AAA advisory council.

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

- a.* Recipients of services under the Act, including minority elders and elders residing in rural areas;
- b.* Representatives of elders;
- c.* Current local elected officials;
- d.* The general public;
- e.* Representatives of health care provider organizations, including providers of veterans' health care, if appropriate;
- f.* Representatives of supportive and nutrition service providers; and
- g.* Persons with leadership experience in private and volunteer sectors.

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

- a.* Advocate for elders in the PSA by keeping informed of all activities and proposals concerning the elders;
- b.* Review and make recommendations on the content, formulation, administration and priorities of the area plan and participate in public hearings on the area plan;
- c.* Serve as an information link between the AAA and providers of services to elders in the PSA;
- d.* Review and comment on community policies, programs and actions which affect elders;
- e.* Assist in generating local support for development of programs for elders in the area.

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

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

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

321—6.9(231) Emergency situations.

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

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

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

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

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

321—6.10(231) AAA procedures manual. A procedures manual shall be developed and kept current by the AAA. The manual shall, at a minimum, establish procedures to be followed in:

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

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

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

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

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

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

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

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

6.10(8) Response to emergency or disaster situations;

6.10(9) Development of methods by which priority for delivery of services is determined;

6.10(10) Obtaining comments or suggestions from recipients about services provided by the AAA;

6.10(11) Determination of an individual's eligibility for home-delivered nutrition services, including specific criteria established by the AAA for:

- a. Initial and subsequent six-month assessments of the individual's eligibility for home-delivered meals;

b. Determination of the number of days per week the individual has a need for home-delivered meals;

c. Determination of the individual's need for other home-delivered nutrition services;

6.10(12) Assurance that any facility housing a service will fully comply with all current federal, state or local health, fire, safety, sanitation, accessibility and licensure requirements;

6.10(13) Methods of monitoring service providers to ensure their performance is in accordance with terms, conditions and specifications for funding, including length of funding period, and the use of project income and methods of providing service;

6.10(14) If appropriate, offering a meal to individuals providing volunteer services during meal times on the same basis as meals are offered to eligible individuals;

6.10(15) Offering a meal to nonelderly individuals with disabilities who reside at home with and accompany eligible elders to a meal site;

6.10(16) Offering home-delivered meals to nonelderly individuals with disabilities when their elderly caregiver is eligible for a home-delivered meal;

6.10(17) Increasing public education and awareness in the prevention of abuse, neglect and exploitation of elders;

6.10(18) Identifying the public and private nonprofit entities involved in the prevention, identification, and treatment of abuse, neglect, and exploitation of elders and determining methods to respond to the needs of elders at risk; and

6.10(19) Offering health promotion activities and information to eligible individuals.

321—6.11(231) Contracts and subgrants.

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

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

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

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

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

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

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

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

321—6.12(231) Direct service.

6.12(1) An AAA must submit a request to provide direct service as part of the area plan. The request may be approved by the department based on documentation of the criteria given in subrule 6.12(3). The following services may be furnished directly by the AAA and are exempt from the requirements in subrule 6.12(3):

a. Information and assistance;

b. Outreach;

c. Case management;

d. Advocacy representation;

e. Public education;

f. Employment services;

- g.* Mental health outreach;
- h.* Coordination of efforts concerning the prevention of elder abuse.

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

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

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

6.12(3) Criteria. The commission may approve an AAA request to provide direct service.

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

(1) Direct provision of service is necessary to ensure an adequate supply of the service, and no potential provider was identified during the public hearing process; or

(2) The proposed service will be of comparable quality in the view of the AAA advisory council, and will meet or exceed service standards developed by the AAA; and

(3) The AAA can provide a service of equal quality at lower cost than another provider.

b. The department may consider other factors including:

(1) The demonstrated capacity of the AAA to deliver services consistently and reliably;

(2) The economic impact of transition from a contract provider to the AAA;

(3) Consideration of any possible disruption of service;

(4) Input from the AAA advisory council; and

(5) Comments from the public.

6.12(4) Conditional approval. If the criteria for approval of a request to provide direct services are not met, a condition may be placed on the area plan approval.

321—6.13(231) Noncompliance. When an AAA's performance in any service does not meet the standards set by the department, the department shall initiate the procedure outlined in 321 IAC 4.

321—6.14(231) Priority service expenditures.

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

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

b. In-home services – 5 percent; and

c. Legal assistance – 3 percent.

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

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

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

321—6.15(231) Waivers of priority service expenditures.

6.15(1) An AAA shall request a waiver from the priority service expenditures in 321—subrule 5.3(3) if it does not propose sufficient funding to allow elders to have convenient access to a service. The waiver request shall be submitted with the plan or plan amendment pursuant to applicable procedures under 321 IAC 11.

6.15(2) The commission, in approving an area plan or a plan amendment, may, upon recommendation of the director, waive the requirement of rule 6.14(231) for any category of service for which the AAA demonstrates the following:

a. That the services being furnished by other providers meet the needs of elders in the PSA for that category of service; or

b. That the AAA has made every reasonable effort to meet the need for a specific category of service.

321—6.16(231) Requirements for service providers.

6.16(1) Contributions. The AAA shall consult with the relevant service providers and elders in the PSA to determine the best method for accepting voluntary contributions. As established by contract with the AAA, each service provider, including an AAA providing direct service, shall:

a. Provide each elder with a voluntary opportunity to contribute to the cost of the service by displaying a suggested contribution schedule that takes into consideration income ranges of eligible individuals in local communities;

b. Clearly inform each recipient that there is no obligation to contribute and that the contribution is purely voluntary;

c. Protect the privacy and confidentiality of each elder with respect to the person's contributions;

d. Utilize appropriate procedures to safeguard and account for all contributions against loss, mishandling or theft by obtaining bonding for all employees and volunteers in accordance with instructions issued by the department in an IAPI;

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

6.16(2) Failure to contribute. A provider that receives department funds may not deny any elder a service because the person will not or cannot contribute to the cost.

6.16(3) Obtain views of elders. Each provider shall utilize procedures determined by the AAA for obtaining the views of participants about the services they receive. A report of procedures utilized and findings shall be issued by the AAA within six months of the signing of the contract.

6.16(4) Seek other sources of funding. Prior to requesting Title III funding, service providers shall demonstrate efforts to seek funds from other federal, state, and local sources.

6.16(5) Compliance by service providers. The AAA shall incorporate in its contract with each service provider an assurance that funds are used in compliance with federal guidelines.

321—6.17(231) Entrepreneurial activities of AAA. An AAA considering entrepreneurial activities must carefully examine the activity to ensure compatibility with its designation as an AAA. The following shall apply to all AAA, unless otherwise prohibited by statute, rule or order:

6.17(1) Demonstrated need—use of funds. AAA may engage in entrepreneurial activities if the activity is in response to a demonstrated need and the funds raised by such activities are used for one of the following purposes:

a. To further extend services and opportunities for elders; or

b. To fund new services and opportunities for elders provided that these services or opportunities are compatible with the AAA functions and goals.

6.17(2) Restrictions. An AAA shall not use funds received from the department in connection with entrepreneurial activities.

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

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

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

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

e. Entrepreneurial activities shall benefit all eligible persons in the PSA, particularly elders in the greatest economic and social need and low-income minority persons.

6.17(3) Department review.

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

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

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

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

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

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

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

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

6.17(5) Community interest.

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

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

321—6.18(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 231.

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CHAPTER 7
AREA AGENCY ON AGING SERVICE DELIVERY
[Prior to 5/20/87, see Aging, Commission on the [20] Ch 8]

321—7.1(231) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

“*Child*” means an individual who is 18 years of age or younger.

“*Grandparent or elder who is a relative caregiver*” means a grandparent or stepgrandparent of a child or a relative of a child by blood or marriage, who is 60 years of age or older and:

1. Lives with the child;
2. Is the primary caregiver of the child because the biological or adoptive parents are unable or unwilling to serve as the primary caregivers; and
3. Has a legal relationship to the child such as legal custody or guardianship or is raising the child informally.

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

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

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

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

“*Therapeutic menu*” means a soft, low-fat, low-sodium, or controlled calorie menu.

321—7.2(231) Service delivery. If the requirements of 321 IAC 6 are met, each AAA may contract for service delivery or provide services directly. All applicable terms, procedures and specifications of the department shall be followed contingent upon the source of funding under the Act. At a minimum, the contract for nutrition services shall include nutrient requirements for meals; food safety, including time limits for transporting food; use of project income; length of contract; cost per unit; participant evaluation surveys as available; and performance requirements to ensure accountability and monitoring.

321—7.3(231) Outreach for greatest need. Each AAA shall conduct outreach efforts to identify the elders with greatest economic or social needs and to inform the elders of the availability of services. The outreach efforts shall place special emphasis on rural, low-income, minority and American Indian elders.

321—7.4(231) Delivery of service.

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

7.4(2) Focal points. The area profile submitted by the AAA as required in 321 IAC 6 shall specify the communities and facilities which are designated as focal points.

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

- a. Communities with the greatest incidence of elders with the characteristics as given in 7.3(231) and the efforts of voluntary organizations in the community;
- b. The needs of participants and the delivery pattern of services funded under the Act and from other sources;
- c. The location of current multipurpose senior centers and congregate nutrition sites;

- d. The geographic boundaries of communities and natural neighborhoods; and
- e. The location of facilities suitable for designation.

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

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

321—7.5(231) Funding for services and program facilities.

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

- a. In distributing these funds, the AAA shall obtain the approval of the commission before contracting for the construction of a facility.
- b. The commission may approve the construction of a facility after considering the views of the AAA and reviewing material from the AAA that documents that there are no suitable facilities available to be a focal point for service delivery.

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

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

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

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

321—7.6(231) Compliance with health, safety and construction requirements. A recipient of any award from the department for a facility housing a program or service shall comply with all applicable state and local health, fire, safety, accessibility, building, zoning, and sanitation laws, ordinances and codes including:

1. Rules of the state fire marshal adopted pursuant to Iowa Code chapter 17A, which apply to the occupancy type of the facility;
2. Applicable requirements for accessibility of the facility to persons with disabilities, including but not limited to provisions of the state of Iowa building code, the federal Americans with Disabilities Act, federal Fair Housing Act and related regulations; and
3. Provisions of any local building code in force in the jurisdiction in which the facility is located and any provisions of the state of Iowa building code which apply statewide. If the facility is located in a jurisdiction in which no local building code is in force, the facility shall comply with the state of Iowa building code in its entirety.

321—7.7(231) Term of use of an acquired or constructed facility. A recipient of funds under the Act that uses these funds for the acquisition or construction of a facility housing a program or service shall comply with the requirements of the Act and other applicable federal requirements regarding the term of use of such facility.

321—7.8(231) Restrictions.

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

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

321—7.9(231) Information and assistance services.

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

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

321—7.10(231) Legal assistance requirements. The provisions and restrictions in this rule apply only to legal assistance providers and only when they are performing tasks covered by Section 307(a)(11) of the Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Providing for the coordination of the furnishing of legal assistance to elders within the state;

b. Providing advice and technical assistance in the delivery of legal assistance to elders within the state;

c. Supporting the provision of training and technical assistance for legal assistance for elders; and

d. Assigning personnel, one of whom shall be known as a legal assistance developer, to provide state leadership in developing legal assistance programs for elders throughout the state.

321—7.11(231) Disease prevention and health promotion under Title III-D of the Act. AAA shall use Title III-D funds to provide disease prevention and health promotion services and information at multipurpose senior centers, at congregate meal sites, through home-delivered meals programs or at other appropriate sites.

321—7.12(231) Nutrition services.

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

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

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

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

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

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

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

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

7.12(7) The AAA shall develop procedures to:

- a.* Ensure that food service personnel, both paid and volunteer, conform to hygienic food handling techniques and to standards given in the current edition of "Center for Food Safety and Applied Nutrition—Food Code" published by the U.S. Food and Drug Administration;
- b.* Provide for ongoing training on safety, hygienic food handling and sanitation for both volunteer and paid food service personnel;
- c.* Ensure that food service personnel, both paid and volunteer, are provided with job descriptions and standards of performance which shall be evaluated annually; and
- d.* Regulate the use of foods remaining after serving at congregate meal sites.

321—7.13(231) AOA NSIP programs.

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

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

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

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

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

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

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

7.13(8) An AAA that receives cash in lieu of commodities shall spend all cash received from the AOA to purchase agricultural food items.

321—7.14(231) Nutrition performance standards.

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

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

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

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

7.14(2) AAA shall ensure that the areawide percentage of residents with the greatest economic and social need is proportionately represented in the characteristics of individuals served in the nutrition program as outlined in 321 IAC 6 for preference in service delivery.

321—7.15(231) Food standards. The AAA or contractor shall, when purchasing food and preparing and delivering meals, comply with all state and local health laws and ordinances concerning preparation, handling and serving food.

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

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

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

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

321—7.16(231) Food-borne illness. The AAA shall develop written procedures for handling suspected cases of food-borne illnesses. The contractor shall report the occurrence or suspected occurrence of a food-borne illness to the AAA within 12 hours. The AAA shall notify the department within 12 hours after the AAA becomes aware of the situation.

321—7.17(231) Menus.

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

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

321—7.18(231) Special dietary needs. The AAA shall ensure that special dietary needs of program participants are met where feasible and appropriate, including the particular requirements arising from the health, religious, or ethnic backgrounds of eligible participants.

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

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

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

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

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

321—7.19(231) Congregate nutrition services. In providing nutrition services or in making awards for congregate nutrition services, the AAA shall:

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

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

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

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

321—7.20(231) Eligibility for meals at congregate nutrition sites.

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

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

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

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

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

321—7.21(231) Home-delivered meals.

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

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

- a. Initial and subsequent six-month assessments of the elder's eligibility;
 - b. Determination of the number of days per week the elder has a need for home-delivered meals;
- and
- c. Determination of the elder's need for other home-delivered nutrition services.

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

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

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

321—7.22(231) Noncompliance. When a grantee fails to meet the nutrition requirements as provided in this chapter, the department shall follow procedures outlined in 321 IAC 4.

321—7.23(231) Requirements for opening or closing congregate nutrition sites. The AAA shall notify the department in writing at least 30 days prior to the AAA's opening, relocating, or terminating a nutrition site. The notification must include:

1. Reasons for the action;
2. Impact on eligible individuals;
3. Impact on nearby meal sites; and
4. Impact on provision of nutrition-related services.

321—7.24(231) Evaluation of sites. The AAA shall conduct on-site evaluations on an annual basis. The reports of these evaluations shall be kept on file for three years and shall include any areas that need additional monitoring or corrective actions.

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

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

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

321—7.25(231) Family caregiver program under Title III-E of the Act. Rescinded IAB 9/10/08, effective 10/15/08.

These rules are intended to implement Iowa Code chapter 231.

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⁰ Two or more ARCs

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

² Effective date of Chapter 7 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 8
LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

[Prior to 5/20/87, see Aging, Commission on the[20] rules 4.2 and 9.6]

321—8.1(231) Definitions.

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

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

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

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

321—8.2(231) Purpose.

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

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

321—8.3(231) Long-term care resident's advocate/ombudsman duties.

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

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

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

321—8.4(231) Access requirements. The resident's advocate/ombudsman or designee shall have access to long-term care facilities, private access to residents, access to residents' personal and medical records and access to other records maintained by the facilities or governmental agencies, pertaining only to the person on whose behalf a complaint is being investigated.

8.4(1) Visits to facilities. The resident's advocate/ombudsman or designee may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident's

advocate/ombudsman's or designee's presence, the resident's advocate/ombudsman or designee may communicate privately and without restriction with any resident who consents to the communication.

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

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

8.4(4) *Request agency assistance.*

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

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

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

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

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

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

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

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

(4) The information is sought by court order.

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

321—8.5(231) Authority and responsibilities of the department.

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

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

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

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

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

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

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

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

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

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

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

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident or complainant or pursuant to 321—9.13(231).

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

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

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

321—8.6(231) Volunteer long-term care ombudsman program.

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

a. *Application forms.* Application forms may be obtained from the resident's advocate/ombudsman program at the department of elder affairs address listed in rule 321—2.1(231) or from other organizations designated by the department.

b. *Submission of forms.* Each applicant shall complete an application and submit it to the department address listed in rule 321—2.1(231).

8.6(2) Conflict of interest.

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

- (1) Employment of the applicant or a member of the applicant's immediate family within the previous year by a long-term care facility or by the owner or operator of any long-term care facility;
- (2) Current participation in the management of a long-term care facility by the applicant or a member of the applicant's immediate family;
- (3) Current ownership or investment interest (represented by equity, debt, or other financial relationship) in an existing or proposed long-term care facility or long-term care service by the applicant or a member of the applicant's immediate family;
- (4) Current involvement in the licensing or certification of a long-term care facility or provision of a long-term care service by the applicant or a member of the applicant's immediate family;

- (5) Receipt of remuneration (in cash or in kind) under a compensation arrangement with an owner or operator of a long-term care facility by the applicant or a member of the applicant's immediate family;
- (6) Acceptance of any gifts or gratuities from a long-term care facility or a resident or a resident's representative;
- (7) Acceptance of money or any other consideration from anyone other than the office of the state long-term care resident's advocate/ombudsman for the performance of an act in the regular course of long-term care;
- (8) Provision of services while employed in a position with duties that conflict with the duties of a volunteer long-term care ombudsman;
- (9) Provision of services to residents of a facility in which a member of the applicant's immediate family resides; or
- (10) Participation in activities which negatively affect the applicant's ability to serve residents or which are likely to create a perception that the applicant's primary interest is other than as an advocate for the residents.

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

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

- a.* It is determined that the applicant has a conflict of interest as listed in subrule 8.6(2); or
- b.* The applicant has unfavorable references, which shall include a DCI criminal background check and abuse check;
- c.* The applicant lives in any part of a continuing care retirement community, or any housing owned by the long-term care facility in which the volunteer would function.

8.6(4) Training. Prior to certification, applicants must successfully complete the required training as approved by the resident's advocate/ombudsman. Successful completion shall be defined as completion of all assignments and tasks during training, demonstration of proper techniques and skills, and an understanding of the role of the volunteer long-term care ombudsman in the long-term care setting. The applicant shall complete a minimum of 24 hours of approved training, which shall include, but not be limited to:

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

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

8.6(6) Certification.

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

b. Certification shall initially be for one year, with recertification available following the volunteer's completion of a minimum of ten hours of approved continuing education in the first year and completion of a progress review by the residents of the facility, the facility administrator and staff, and the resident's advocate/ombudsman or a representative from the office of the state long-term care resident's advocate/ombudsman program.

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

8.6(7) Continuing education.

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

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

(2) Governor's conference on aging;

(3) Area Alzheimer's disease conferences;

(4) Elder abuse conferences;

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

(6) Other events as approved in advance by the resident's advocate/ombudsman.

b. Volunteer long-term care ombudsmen are responsible for reporting continuing education hours to the resident's advocate/ombudsman or designee within 30 days following the completion of the continuing education event.

8.6(8) Contesting an appointment. A provider who wishes to contest the appointment of a volunteer shall do so in writing to the resident's advocate/ombudsman. The final determination shall be made by the resident's advocate/ombudsman within 30 days after receipt of notification from the provider.

8.6(9) Certification revocation.

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

b. Notice of revocation. The resident's advocate/ombudsman shall notify the volunteer and the facility in writing of a revocation of certification.

c. Request for reconsideration. A request for reconsideration or reinstatement of certification may be made in writing to the resident's advocate/ombudsman. The request must be filed within 14 days after receipt of the notice of revocation.

d. Response time. The resident's advocate/ombudsman shall investigate and consider the request and notify the requesting party and the facility of the decision within 30 days of receipt of the written request.

8.6(10) Access.

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

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

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

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

- a.* Conducting initial inquiries regarding complaints registered with the long-term care resident's advocate/ombudsman;
- b.* At the request of the resident's advocate/ombudsman or designee, providing follow-up visits on cases investigated by the resident's advocate/ombudsman or designee;
- c.* Attending, assisting with, or providing technical assistance to resident and family council meetings as needed;
- d.* At the request of the resident's advocate/ombudsman or designee, making follow-up visits to a facility after a department of inspections and appeals survey or complaint investigation to monitor the progress and changes listed in the plan of correction or to monitor the correction of deficiencies;
- e.* Tracking, monitoring and following up on publicly available information regarding facility performance;
- f.* Identifying concerns in a facility. Concerns identified should be discussed with the chair of the resident advocate committee to determine an appropriate course of action to reach resolution;
- g.* Completing all reports and submitting them to the resident's advocate/ombudsman in a timely manner; and
- h.* Completing exit interviews when the volunteer ombudsman resigns.

These rules are intended to implement Iowa Code chapter 231.

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

CHAPTER 9
RESIDENT ADVOCATE COMMITTEES

321—9.1(231) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter.

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

“*Relatives*” means any one of the following: father, mother, son, daughter, brother, sister, aunt, uncle, first cousin, nephew, niece, wife, husband, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepparent, stepbrother, stepchild, stepsister, half sister, half brother, grandparent or grandchild.

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

321—9.2(231) Resident advocate committees established.

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

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

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

321—9.3(231) Application for committee membership. An interested individual may apply to the department for membership. Individuals, AAAs and other organizations are encouraged to recommend potential volunteers for committee membership to the department pursuant to Iowa Code section 135C.25.

9.3(1) *Application forms.* Application forms may be obtained from the department at the address listed in 321 IAC 2.3(2), from the department Web site or from organizations designated by the department.

9.3(2) *Submission of forms.* Each applicant shall complete and submit an application for membership to the department at the address in 321 IAC 2.3(2).

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

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

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

321—9.4(231) Appointment to resident advocate committees.

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

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

321—9.5(231) Objection to and termination of appointments to resident advocate committees.

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

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

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

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

321—9.6(231) Request for reconsideration of appointment or termination of appointment.

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

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

321—9.7(231) Resident advocate committee structure and procedures.

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

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

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

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

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

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

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

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

321—9.8(231) Duties of the committee. Committee members shall, at a minimum, participate in one training session approved by the department each calendar year. Committee members shall represent and advocate for the rights of residents of the facility. As a part of this advocacy, committee members shall investigate complaints and grievances according to the procedures established in rule 321—9.11(231).

321—9.9(231) Committee access and assistance.

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

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

321—9.10(231) Confidentiality.

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

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

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

321—9.11(231) Committee response to complaints and grievances. Throughout the investigation of all complaints and grievances, the committee shall maintain objectivity and act as advocates for residents without being adversaries of the facility.

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

- a.* Maintain the dignity and privacy of residents, as shall all other persons involved in a complaint or grievance investigation.
- b.* Using the procedures appropriate to the source of the complaint, receive and investigate complaints or grievances from an individual or the department regarding the rights and welfare of residents.
- c.* Seek to resolve the complaint or grievance and, if feasible, prevent unnecessary regulatory action against a facility. However, the committee shall not prevent or dissuade regulatory action when necessary to protect or achieve the rights of residents.
- d.* Solicit input from the complainant and the resident regarding the choices for action to be pursued by the committee.

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

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

b. The investigating committee member shall make at least one unannounced visit to the facility.

c. The committee shall, to the extent possible, ascertain the facts of the situation through personal observation of conditions and activities in the facility and by talking with all persons who may have knowledge regarding the matter under investigation.

d. If a resolution cannot be reached, the committee may contact the resident's advocate/ombudsman for follow-up action as appropriate.

e. Committee members shall keep the complainant informed of progress in the investigation.

321—9.12(231) Complaints referred from the department of inspections and appeals. The following procedures shall apply to complaints received or initiated by the department of inspections and appeals and referred to the department of elder affairs for investigation by a resident advocate committee.

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

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

9.12(3) Investigation. Investigation of the complaint or grievance shall be conducted in accordance with rule 321—9.11(231).

321—9.13(231) Accountability measures.

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

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

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

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

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

9.13(5) An aggrieved party has 30 calendar days from the receipt of written notice of the decision of the resident's advocate/ombudsman to request a hearing pursuant to 321 IAC 13.

9.13(6) All appeals and judicial review shall be conducted pursuant to 321 IAC 13.

321—9.14(231) Reporting statistics. The office of the resident's advocate/ombudsman shall record the number of issues and concerns listed on the forms submitted by the committees and the number resolved. Each year, the office of the resident's advocate/ombudsman shall calculate the percentage of issues and concerns that are resolved, based on the total number of issues and concerns identified between January 1 and December 31 of the preceding year. Prior to May 1 of each year, the office of the resident's advocate/ombudsman shall report the resolution rate of each facility to the department of human services.

321—9.15(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid of unconstitutional for any reason, the remainder of this chapter shall not be affected.

These rules are intended to implement Iowa Code section 231.44.

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CHAPTER 10

SENIOR INTERNSHIP PROGRAM (SIP)

[Prior to 5/20/87, see Aging, Commission on the [20] rules 8.67 to 8.70]

321—10.1(231) Scope and purpose.

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

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

321—10.2(231) Definitions. Words and phrases used in this chapter shall be as defined in 321—Chapter 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter. The appearance of an acronym after a defined term indicates that the definition was taken from that source.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Termination” means a separation from the program.

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

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

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

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

321—10.3(231) Eligibility for service.

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

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

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

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

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

321—10.4(231) Funding.

10.4(1) SIP shall be funded by:

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

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

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

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

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

321—10.5(231) Program requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Assist participants in accessing approved training sessions;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.5(4) *Department responsibilities.* The department shall:

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

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

c. Provide training and technical assistance to subproject sponsors;

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

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

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

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

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

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

j. Maintain records as required by 321—subrule 5.13(1).

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

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

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

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

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

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

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

c. The department shall determine whether the complaint is of a nature to initiate an informal review or a contested case proceeding as set forth in rule 321—2.9(231) and 321—Chapter 13.

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

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

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

321—10.6(231) Funding criteria.

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

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

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

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

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

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

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

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

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

10.6(4) *Appeal.* An appeal to a proposed decision made pursuant to these rules may be made according to the procedures contained in Iowa Code chapter 17A and 321—Chapter 13 and must be filed within 30 days of the issuance of the proposed decision.

10.6(5) Reallocation. Reallocation of Title V funds may be made by the director according to the criteria defined in 321—paragraph 5.8(1)“b.”

321—10.7(231) Monitoring and record keeping.

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

- a. Submit performance, fiscal and program reports to the department of elder affairs in accordance with procedures established by the department;
- b. Maintain files on each Title V participant containing the following: Immigration and Naturalization Service I-9 (Proof of Citizenship), application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, physical examination report (or properly executed waiver), individual employment plan (IEP), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and
- c. Maintain files for each host agency or work site, which shall include:
 - (1) The host agency or work site agreement containing relevant program requirements;
 - (2) Evidence that the host agency or work site participant supervisor has received orientation; and
 - (3) Host agency or work site evaluation reports.

10.7(2) Department duties. The department shall:

- a. Conduct desk monitoring of the SIP. The department may conduct on-site monitoring if circumstances require an inspection of subproject sponsor records;
- b. Conduct an on-site assessment of each SIP subproject at least annually. The subproject sponsor shall be informed in writing of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department and shall be open to inspection by authorized state and federal officials;
- c. Maintain files on Title V participants that include applications, recertifications, physical examination records, physical examination waivers, and termination forms (if applicable); and
- d. Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

321—10.8(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapter 231.

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

CHAPTER 11
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

321—11.1(17A,231,ExecOrd11) Definitions. For purposes of this chapter:

“*Department*” means the department of elder affairs.

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

“*Waiver or variance*” means action by the department which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person or program on the basis of the particular circumstances of that person or program. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

321—11.2(17A,231,ExecOrd11) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule. Specific waiver provisions are provided in 321—Chapters 4, 6 and 9.

321—11.3(17A,231,ExecOrd11) Applicability of chapter. The department may only grant a waiver from a rule if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute.

321—11.4(17A,231,ExecOrd11) Criteria for waiver or variance. In response to a petition completed pursuant to rule 321—11.6(17A,231,ExecOrd11), the department may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

321—11.5(17A,231,ExecOrd11) Filing of petition. A petition for a waiver must be submitted in writing to the Director, Iowa Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025, as follows:

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

11.5(2) Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case, and submitted to the department.

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

321—11.6(17A,231,ExecOrd11) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in 321—11.4(17A,231,ExecOrd11). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the department and the petitioner relating to the regulated activity or certificate affected by the proposed waiver, including a description of each affected certificate held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or certificate within the last five years.

6. Any information known to the requester regarding the department's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

321—11.7(17A,231,ExecOrd11) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the department's appropriate staff person, or a committee of the department.

321—11.8(17A,231,ExecOrd11) Notice. The department shall acknowledge a petition upon its receipt in the department's office. The department shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and to provide a written statement to the department attesting that notice has been provided.

321—11.9(17A,231,ExecOrd11) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

321—11.10(17A,231,ExecOrd11) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

11.10(1) Department discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the department, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.

11.10(2) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a department rule.

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

11.10(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

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

11.10(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver may be renewed if the department finds that grounds for a waiver continue to exist.

11.10(7) *Time for ruling.* The department shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

11.10(8) *When deemed denied.* Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver.

11.10(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

321—11.11(17A,22,231,ExecOrd11) *Public availability.* All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

321—11.12(17A,22,231,ExecOrd11) *Summary reports.* Semiannually, the department shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

321—11.13(17A,231,ExecOrd11) *Cancellation of a waiver.* A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

321—11.14(17A,231,ExecOrd11) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

321—11.15(17A,231,ExecOrd11) *Defense.* After the department issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

321—11.16(17A,231,ExecOrd11) Judicial review. Judicial review of a department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the department pursuant to Iowa Code section 17A.19.

321—11.17(17A,231,ExecOrd11) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid of unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

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

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

[Prior to 3/15/06, see 321—7.7(231)]

321—12.1(231) Authority. This chapter implements the:

1. Prevention and awareness of elder abuse, neglect, or exploitation program as provided in Iowa Iowa chapter 231 and in accordance with the federal Older Americans Act; and
2. Mandatory reporter training as provided in Iowa Code chapter 235B.

321—12.2(231) Purpose. This chapter establishes methods to increase the awareness of elder abuse, neglect, or exploitation among providers, health care professionals, county attorneys, law enforcement, community change agents and the general public and establishes criteria for mandatory reporter training as required in Iowa Code chapter 235B.

321—12.3(231) Elder Abuse, neglect, or exploitation prevention and public awareness. In accordance with Iowa Code chapter 231 and Title VII of the Older Americans Act, the department shall develop and enhance programs for the prevention of elder abuse, neglect and exploitation, including but not limited to public awareness and education.

12.3(1) Definitions. Words and phrases used in this rule shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions apply to this rule:

“Exploitation” (OAA) means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

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

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

321—12.4(231,235B) Dependent adult abuse mandatory reporter training. Words and phrases used in this rule shall be as defined in Iowa Code chapter 235B.

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

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

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

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

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

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

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

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

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

CHAPTER 13
RULES AND PRACTICES IN CONTESTED CASES

321—13.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the department of elder affairs.

321—13.2(17A) Definitions. Except where otherwise specifically defined by law:

“*Commission*” means the commission of elder affairs as established in Iowa Code chapter 231.

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

“*Department*” means the department of elder affairs.

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

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

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

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

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

321—13.3(17A) Time requirements.

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

13.3(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

321—13.4(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the department action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

321—13.5(17A) Notice of hearing.

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

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

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

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the department or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

- e.* Identification of all parties including the name, address and telephone number of the person who will act as advocate for the department or the state and of parties' counsel, where known;
- f.* Reference to the procedural rules governing conduct of the contested case proceeding;
- g.* Reference to the procedural rules governing informal settlement;
- h.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

321—13.6(17A) Presiding officer.

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

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

- a.* Neither the department nor any officer of the department under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* An administrative law judge is unavailable to hear the case within a reasonable time.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.

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

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

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

321—13.7(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

321—13.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

321—13.9(17A) Disqualification.

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

- a.* Has a personal bias or prejudice concerning a party or a representative of a party;
- b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

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

13.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

13.9(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 13.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 13.25(17A) and seek a stay under rule 13.29(17A).

321—13.10(17A) Consolidation—severance.

13.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where:

a. The matters at issue involve common parties or common questions of fact or law;

b. Consolidation would expedite and simplify consideration of the issues involved; and

c. Consolidation would not adversely affect the rights of any of the parties to those proceedings.

13.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

321—13.11(17A) Pleadings.

13.11(1) Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

13.11(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

13.11(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

13.11(4) Amendment. Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

321—13.12(17A) Service and filing of pleadings and other papers.

13.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

13.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

13.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Suite 2, Des Moines, Iowa 50319. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the department.

13.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the department, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

13.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).

(Date)

(Signature)

321—13.13(17A) Discovery.

13.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

13.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 13.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

13.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

321—13.14(17A) Subpoenas.**13.14(1) Issuance.**

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

13.14(2) Motion to quash or modify. The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

321—13.15(17A) Motions.

13.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

13.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

13.15(3) The presiding officer may schedule oral argument on any motion.

13.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the department or an order of the presiding officer.

13.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to 13.28(17A) and appeal pursuant to 13.27(17A).

321—13.16(17A) Prehearing conference.

13.16(1) *Any party may request a prehearing conference.* A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed

not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the department to all parties.

For good cause the presiding officer may permit variances from this rule.

13.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

13.16(3) In addition to the requirements of subrule 13.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

13.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

321—13.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

13.17(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The department may waive notice of such requests for a particular case or an entire class of cases.

13.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

321—13.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with department rules. Unless otherwise provided, a withdrawal shall be with prejudice.

321—13.19(17A) Intervention.

13.19(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

13.19(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

13.19(3) Grounds for intervention. The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

13.19(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

321—13.20(17A) Hearing procedures.

13.20(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

13.20(2) All objections shall be timely made and stated on the record.

13.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

13.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

13.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

13.20(6) Witnesses may be sequestered during the hearing.

13.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

321—13.21(17A) Evidence.

13.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

13.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

13.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

13.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

13.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

13.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

321—13.22(17A) Default.

13.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

13.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

13.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 13.27(17A). A motion to vacate must state all facts relied upon by the moving party which establishes that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

13.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

13.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

13.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

13.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision

granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 13.25(17A).

13.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

13.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues.

13.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 13.29(17A).

321—13.23(17A) Ex parte communication.

13.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the department or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 13.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

13.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

13.23(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

13.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 13.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

13.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

13.23(6) The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 13.23(1).

13.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 13.17(17A).

13.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and

served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

13.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

13.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to the commission of elder affairs for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

321—13.24(17A) Recording costs. Upon request, the department shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

321—13.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

321—13.26(17A) Final decision.

13.26(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

13.26(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the department within the time provided in rule 13.27(17A).

321—13.27(17A) Appeals and review.

13.27(1) Appeal by party. Any adversely affected party may appeal a proposed decision to the commission within 30 days after issuance of the proposed decision.

13.27(2) Review. The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

13.27(3) Notice of appeal. An appeal of a proposed decision is initiated by filing a timely notice of appeal with the department. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

13.27(4) Requests to present additional evidence. A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to

present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

13.27(5) *Scheduling.* The department shall issue a schedule for consideration of the appeal.

13.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The commission may resolve the appeal on the briefs or provide an opportunity for oral argument. The commission may shorten or extend the briefing period as appropriate.

321—13.28(17A) Applications for rehearing.

13.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

13.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the department decision on the existing record and whether, on the basis of the grounds enumerated in subrule 13.27(4), the applicant requests an opportunity to submit additional evidence.

13.28(3) *Time of filing.* The application shall be filed with the department within 20 days after issuance of the final decision.

13.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the department shall serve copies on all parties.

13.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the department grants the application within 20 days after its filing.

321—13.29(17A) Stays of department actions.

13.29(1) *When available.*

a. Any party to a contested case proceeding may petition the department for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the department. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commission may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the department for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

13.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or commission shall consider the factors listed in Iowa Code section 17A.19(5)“c.”

13.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the department or any other party.

321—13.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

321—13.31(17A) Emergency adjudicative proceedings.

13.31(1) Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare and, consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order. Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

- a. Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;
- b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;
- c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;
- d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and
- e. Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

13.31(2) Issuance of order.

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

- (1) Personal delivery;
- (2) Certified mail, return receipt requested, to the last address on file with the department;
- (3) Certified mail to the last address on file with the department;
- (4) First-class mail to the last address on file with the department; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that department orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

13.31(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

13.31(4) Completion of proceedings. After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing.

321—13.32(17A) Informal settlement.

13.32(1) A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

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

b. When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.

c. Where there are more than two parties to a controversy before the department, a separate settlement between one party and the department is permissible.

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

13.32(2) A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

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

b. When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

c. Where there are more than two parties to a contested case proceeding involving the department, a separate settlement between one party and the department is permissible.

d. A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

These rules are intended to implement Iowa Code chapters 17A and 231.

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CHAPTER 14
RETIRED AND SENIOR VOLUNTEER PROGRAM (RSVP)

[Prior to 5/20/87, see Elder Affairs[321] Ch 12]

Rescinded IAB 6/22/05, effective 6/30/05

CHAPTER 15
ELDER ABUSE INITIATIVE, EMERGENCY SHELTER AND
SUPPORT SERVICES PROJECTS

321—15.1(231) Authority. The elder abuse initiative, emergency shelter and support services projects are authorized by Iowa Code section 231.56A.

321—15.2(231) Purpose. The purpose of these projects is to focus on the prevention, intervention, detection and reporting of elder abuse, neglect and exploitation by presenting elders with options to enhance their lifestyle choices.

321—15.3(231) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter:

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

“Exploitation” (OAA) means the illegal or improper act or process of an individual, including a caregiver, using the resources of an older individual for monetary or personal benefit, profit, or gain.

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

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

321—15.4(231,249H) Funding. Funding is provided by the senior living trust fund created in Iowa Code chapter 249H as well as other funds which may be available for activities directed toward the prevention of abuse, neglect and exploitation of elders. Requirements of Iowa Code section 231.56A(5) and (6) apply to funds awarded for EAI projects.

321—15.5(231) Eligibility.

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

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

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

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

321—15.6(231) Application process.

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

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

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

15.6(4) Upon commission approval of the department recommendation, the successful applicant shall enter into a contract with the department which delineates the responsibilities of each party.

321—15.7(231) Reporting and monitoring. Monitoring and submission of fiscal and program reports shall be in accordance with the terms of the contract as well as the requirements of this chapter.

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

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

CHAPTER 16
SENIOR LIVING COORDINATING UNIT

321—16.1(231,249H) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definition also applies to this chapter:

“Unit” means the senior living coordinating unit established in Iowa Code section 231.58.

321—16.2(231,249H) Organization of the unit and proceedings.

16.2(1) The senior living coordinating unit is created within the department of elder affairs by Iowa Code section 231.58.

16.2(2) The director of the department of elder affairs shall serve as chairperson.

16.2(3) The voting members of the unit shall elect a vice-chairperson from its membership at the first meeting following July 1 of each year.

16.2(4) Four voting members of the unit constitute a quorum.

16.2(5) The unit shall be governed in accordance with Iowa Code chapter 21, and the unit’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

16.2(6) The technical and administrative functions of the unit shall be performed by staff of the department of elder affairs.

321—16.3(231,249H) Chairperson and vice-chairperson duties.

16.3(1) The chairperson’s duties include:

- a. Ensuring that tentative agendas for meetings are prepared and distributed;
- b. Ensuring that all notices to the public required by Iowa Code section 21.4 are given;
- c. Convening and chairing unit meetings;
- d. Ensuring that unit proceedings are recorded; and
- e. Ensuring that minutes of meetings are prepared and distributed.

16.3(2) The vice-chairperson shall assume the chairperson’s duties in the chairperson’s absence.

321—16.4(21,231,249H) Meetings. The unit shall meet a minimum of six times a year. Meeting dates shall be set by members of the unit at the first meeting following July 1 of each year. The chairperson may call a special meeting upon five days’ notice.

321—16.5(231,249H) Communications. Communications to the unit may be addressed to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code chapters 21, 231 and 249H.

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¹ Effective date of Chapter 16 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 17
PETITION FOR RULE MAKING

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]

Insert the petition for rule making segment of the Uniform Rules on Agency Procedure which is printed in the first volume of Iowa Administrative Code, with the following amendments:

321—17.1(17A) Petition for rule making. In lieu of the words “designate office”, insert “the Director, Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025”.

In lieu of the words “AGENCY NAME”, the heading on the petition should read:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS

321—17.3(17A) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the Director, Iowa Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025.

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

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CHAPTER 18
DECLARATORY ORDERS

[Prior to 5/20/87, see Aging, Commission on the[20] Ch 10]

321—18.1(17A) Petition for declaratory order. Any person may file a petition with the department of elder affairs for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the department of elder affairs at the Iowa Department of Elder Affairs, Attn: Director, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. A petition is deemed filed when it is received by that office. The department of elder affairs shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the department an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS	
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	} PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 18.7(17A).
9. The petitioner’s state identification number, if applicable.

The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

Application requests for an informal review of department policy, law or rules in relation to specific facts shall be in writing and may be submitted electronically or by mail. The request must recite all pertinent facts and questions. The department response to a request for informal review shall not be considered a declaratory order as specified in Iowa Code chapter 17A. The department may, at its discretion, choose to issue a declaratory order in response to a request for informal review.

321—18.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the department of elder affairs shall give notice of the petition to all persons not served by the petitioner pursuant to 18.6(17A) to whom notice is required by any provision of law. The department of elder affairs may also give notice to any other persons.

321—18.3(17A) Intervention.

18.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 20 days of the filing of a petition for declaratory order (after time for

notice under 18.2(17A) and before 30-day time for department action under 18.8(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

18.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the department of elder affairs.

18.3(3) A petition for intervention shall be filed at the department of elder affairs. Such a petition is deemed filed when it is received by that office. The department of elder affairs will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

BEFORE THE DEPARTMENT OF ELDER AFFAIRS		
Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law cited in original petition).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

321—18.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The department of elder affairs may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

321—18.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Director, Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025.

321—18.6(17A) Service and filing of petitions and other papers.

18.6(1) When service required. Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

18.6(2) Filing—when required. All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Director, Department of Elder Affairs, Jessie M. Parker Building, 510 East 12th Street, Des Moines, Iowa 50319-9025. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the department of elder affairs.

18.6(3) Method of service, time of filing, and proof of mailing. Method of service, time of filing, and proof of mailing shall be as provided by rule 321—13.12(17A).

321—18.7(17A) Consideration. Upon request by petitioner, the department of elder affairs must schedule a brief and informal meeting between the original petitioner, all intervenors, and the department of elder affairs, a member of the department of elder affairs, or a member of the staff of the department of elder affairs, to discuss the questions raised. The department of elder affairs may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the department of elder affairs by any person.

321—18.8(17A) Action on petition.

18.8(1) Within the time allowed by Iowa Code section 17A.9(3) after receipt of a petition for a declaratory order, the department of elder affairs or designee shall take action on the petition as required by Iowa Code section 17A.9(5).

18.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 321—13.2(17A).

321—18.9(17A) Refusal to issue order.

18.9(1) The department of elder affairs shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the department of elder affairs to issue an order.
3. The department of elder affairs does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other department or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge a department decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the department of elder affairs to determine whether a statute is unconstitutional on its face.

18.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final department action on the petition.

18.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

321—18.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion.

A declaratory order is effective on the date of issuance.

321—18.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

321—18.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the department of elder affairs, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the department of elder affairs. The issuance of a declaratory order constitutes final department action on the petition.

These rules are intended to implement Iowa Code chapters 17 and 231.

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CHAPTER 19
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

[Prior to 5/18/88, see 321—2.6(249D)]

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

321—19.1(17A,22) Definitions. As used in this chapter:

“Agency” in these rules means the department of elder affairs.

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

321—19.3(17A,22) Requests for access to records.

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

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

19.3(7) Fees.

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

321—19.9(17A,22) Disclosures without consent of the subject.

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

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

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

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

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

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

e. To the legislative services agency.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

321—19.10(17A,22) Routine use.

19.10(1) Defined. “Routine use” means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

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

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

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

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

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

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

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

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

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

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

321—19.11(17A,22) Consensual disclosure of confidential records.

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

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

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

321—19.12(17A,22) Release to subject.

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

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

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

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

d. As otherwise authorized by law.

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

321—19.13(17A,22) Availability of records.

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

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

- a. Sealed bids received prior to the time set for public opening of bids, Iowa Code section 72.3.
- b. Tax records made available to the agency under Iowa Code sections 422.20 and 422.72.
- c. Any other record made confidential by law.
- d. Records which are part of the long-term care resident's advocate/ombudsman complaint system under Iowa Code section 231.43.
- e. Any records which are client information for the Senior Community Service Employment Program. Pursuant to authority provided in Iowa Code section 231.51, the department administers the SCSEP program, a federally funded employment program. Federal law requires that personal information about participants be kept confidential under 20 CFR 674.203b-3(1985). The department has determined that the U.S. Department of Labor would not provide funding for the SCSEP program unless the confidentiality of participants is maintained. In order, therefore, to prevent the denial of these funds, the information will be kept confidential and any requirements to the contrary in Iowa Code chapter 22 must be waived as provided in Iowa Code section 22.9.
- f. Records which are exempt from disclosure under Iowa Code section 22.7.
- g. Minutes of closed meetings of a government body, Iowa Code section 21.5(4).
- h. Identifying details of final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1) "d."
- i. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:
 - (1) Enable law violators to avoid detection;
 - (2) Facilitate disregard of requirements imposed by law;
 - (3) Give a clearly improper advantage to persons who are in an adverse position to the agency, as indicated in Iowa Code sections 17A.2 and 17A.3.
- j. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

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

321—19.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 19.1(17A,22). For each record system, this rule describes the legal authority for collection of that information, the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. Some of the record systems described in the accompanying chart as "open" may contain confidential information under subrule 19.13(2). The record systems maintained by the agency are:

Abbreviations are used in the chart as follows:

Code	Meaning
O/C	The record is partly open and partly confidential.
O	The records are open for public inspection.
C	The records are confidential and are not open to the public.
PI	Personally identifiable information.
NA	Not Applicable.

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Record of Commission and Statutory Committees	O/C	Iowa Code 21.5(4)	No	NA
Rule Making	O	NA	No	NA
Declaratory Rulings	O	NA	No	NA
Rules and Policy Manuals	O	NA	No	NA
State Plans	O	NA	No	NA
Publications	O	NA	No	NA
Statistical Reports	O	NA	No	NA
Financial and Administrative Records	O	NA	No	NA
Contracts and Interagency Agreements	O	NA	No	NA
Grant Records				
• Title III	O	NA	No	NA
• Title V	O	NA	No	NA
• Discretionary	O	NA	No	NA
• USDA	O	NA	No	NA
• Title IV	O	NA	No	NA
Program Records				
• Notice of Grant Awards	O	NA	No	NA
• Senior Community Service Employment	O/C	20 CFR 674.203b-3	Yes	20 CFR 674.203b-3
			name address age race eligibility info. area medical info. phone no.	
• Elder Abuse	O	NA	No	NA
• Retired Iowan	O	NA	No	NA
Employment				
• Elderlaw	O	NA	No	NA
• Retired Senior Volunteer	O	NA	No	NA
• Elderly Services	O	NA	No	NA
• Insurance Information	O	NA	No	NA
• Alzheimer's Disease	O	NA	No	NA
• JTPA	O	NA	No	NA
• Long-Term Care	O	NA	No	NA
Coordinating Unit				
• Housing	O	NA	Yes	Iowa Code 231.23
• Advocacy				
			name address	
• Training Information	O	NA	Yes	Iowa Code 231.23

DESCRIPTION OF RECORD	TYPE OF RECORD	LEGAL AUTHORITY FOR CONFIDENTIALITY	PERSONALLY IDENTIFIABLE INFORMATION	LEGAL AUTHORITY FOR PI INFORMATION
Care Review Committees	O	NA	name address Yes	Iowa Code 231.44
Older Iowan Legislature	O	NA	name address county PSA phone no. training info. Yes	Iowa Code 231.23
State Advisory Council	O	NA	name address phone no. PSA Yes	Iowa Code 231.23
Ombudsman Complaints	C	Iowa Code 135C.37, 231.42	Yes	Iowa Code 135C.37 231.42
Newsletter Mailing Lists, Conference Lists, Interested Individuals and Group Lists, Resource Lists	O	NA	name address county facility level of care lic. administrator patient pay status complainant complaint description cat. receiver of complaint investigator method & date verification scope of facility complaint Yes	Iowa Code 231.23
Centenarians Registry	O	NA	name address area county facility phone no. birth date death date sex Yes	Iowa Code 231.23

19.14(1) *Litigation files.* These files or records contain information regarding litigation or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorney’s notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wishing copies of pleadings and other

documents filed in litigation should obtain them from the clerk of the appropriate court which maintains the official copy.

19.14(2) *Personnel files.* The agency maintains files containing information about employees, families and dependents, and applicants for positions with the agency. The files include payroll records, biographical information, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code section 22.7(11).

321—19.15(17A,22) Other groups of records.

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

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

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

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

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

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

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

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

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

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

19.15(11) *Iowa aging memos and directives.* The agency provides guidance and instructions to its grantees through Iowa aging memorandums and Iowa aging directives. Copies of these documents

are available from the department. Iowa aging memorandums and Iowa aging directives may contain information about individuals under the authority of Iowa Code chapter 231.

321—19.16(17A,22) Data processing systems. All data processing systems used by the agency may permit the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

321—19.17(17A,22) Applicability. This chapter does not:

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

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

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

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

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

CHAPTER 20
OLDER IOWANS LEGISLATURE

Rescinded IAB 12/22/04, effective 1/26/05

CHAPTER 21
CASE MANAGEMENT PROGRAM FOR FRAIL ELDER

321—21.1(231) Authority. This chapter implements the case management program for frail elders (CMPFE) as provided in Iowa Code section 231.23A.

321—21.2(231) Purpose. This chapter sets out consumer eligibility, covered services, program administration and program standards to assist consumers in making appropriate use of the long-term care continuum which ranges from care in the home to institutionalization.

321—21.3(231) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definition also applies to this chapter:

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

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

321—21.4(231) Program administration.

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

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

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

21.4(4) Appeals of decisions by the AAA shall follow the procedures given in 321 IAC 2.9(231).

321—21.5(231) Eligibility for CMPFE services. A person meeting all the following criteria shall be eligible for CMPFE services:

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

321—21.6(231) Admission into the case management program. The date of admission into the case management program for consumers shall be the date of the assessment.

321—21.7(231) Discharge from CMPFE.

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

- a. The consumer dies;
- b. The consumer moves out of state;
- c. The consumer moves into a nursing facility and is expected to stay in the facility for more than 90 days;
- d. The consumer or the consumer’s legal representative requests termination from CMPFE;
- e. The consumer is unwilling or unable to adhere to the agreed-upon service plan;

f. The consumer or the consumer's legal representative refuses to provide access to information necessary for the development or implementation of the service plan;

g. The consumer's needs cannot be met in a way that ensures the consumer's health, safety and welfare; or

h. The consumer's goals are achieved and the consumer no longer needs case management.

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

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

321—21.8(231) Organizational requirements.

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

a. The process for delegating case management responsibilities to a case manager;

b. Identification of where conflicts do, or could, exist;

c. Procedures to eliminate or minimize those conflicts;

d. A process for conflict resolution with the consumer's best interest as the priority.

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

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

321—21.9(231) Personnel qualifications. After July 1, 2006, the following are minimum training, education and work history requirements for AAA and contract personnel in the CMPFE program:

21.9(1) Case manager qualifications for employment.

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

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

21.9(2) CMPFE coordinator qualifications for employment.

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

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

21.9(3) Training required during employment.

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

b. All case managers shall:

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

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

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

d. All CMPFE coordinators shall:

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

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

321—21.10(231) Covered services. Case management services may vary by consumer but shall include comprehensive screening and assessment of the consumer's needs, development and implementation of a written service plan, ongoing monitoring to ensure that services specified in the plan are being provided, and ongoing advocacy on behalf of the consumer.

321—21.11(231) Assessment of consumer needs. The assessment of consumer needs shall be conducted in person and shall, at a minimum, consist of:

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

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

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

321—21.12(231) Service plan development.

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

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

- a. A description of the level of care;
- b. Goals to be obtained by the consumer;
- c. Expected outcomes;
- d. Services to be provided, providers of those services and the frequency and cost of services, if available; and
- e. Exit and contingency planning.

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

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

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

321—21.13(231) Monitoring. In order to ensure consumer health, safety and welfare, the case manager shall:

1. Monitor the provision of services on an ongoing basis;
2. Hold an individual face-to-face meeting with the consumer at least quarterly to review the service plan and services provided; and
3. Document in the consumer's case files all contacts and case management activities undertaken on behalf of the consumer.

321—21.14(231) Reassessment.

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

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

321—21.15(231) Confidentiality. Except by written consent of the consumer or the consumer's legal representative, the use or disclosure by any person of any information concerning a consumer for any

purpose not directly connected with the administration of the responsibilities of the department, AAA or authorized service provider is prohibited.

321—21.16(231) Contracting for case management services.

21.16(1) AAA may choose to contract with local provider agencies for delivery of case management services. If the AAA contracts for case management services, the AAA shall have written procedures established under 321 IAC 6.9(231) that create a framework for ongoing review of how the contract agency is meeting program standards and the terms of the contract. The department shall audit AAA procedures to ensure that the area agency's monitoring is sufficient and timely.

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

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

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

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

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

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

- a.* Specific procedures to identify where conflicts could exist;
- b.* Procedures to eliminate or minimize the conflicts upon identification of situations that might indicate that a conflict of interest could exist;
- c.* Steps that must be taken to resolve the issue when a conflict of interest arises or a complaint of conflict of interest is received; and
- d.* Written documentation or follow-up letters that show that the outcome was satisfactory to all parties involved.

321—21.17(231) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement 2005 Iowa Acts, chapter 167, section 14, and Iowa Code section 231.23A.

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CHAPTER 22
ELDER FAMILY HOMES (EFH)

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

CHAPTER 23
REPRESENTATIVE PAYEE PROGRAM (RPP) AND BILL PAYER PROGRAM (BPP)

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

CHAPTER 24
ADULT DAY SERVICES PROGRAMS

321—24.1(231D) Definitions.

“*Accredited*” means that the program has received accreditation from the entity named in subrule 24.14(1).

“*Adult*” means a person 18 years of age or older.

“*Adult day services,*” “*adult day services program*” or “*program*” means an organized program providing a variety of health, social, and related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

“*Adult with functional impairments*” means an adult who has a psychological, cognitive or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“*Allied health care professional*” means a person licensed through the Iowa department of public health, other than a physician, physician assistant, registered nurse or advanced registered nurse practitioner, who provides health services to the participant.

“*Assistance*” means aid to a participant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the participant regarding a particular task or activity shall not be construed to mean the participant has not participated in the task or activity.

“*CARF*” means the Rehabilitation Accreditation Commission.

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

“*Contractual agreement*” means written agreement between the program and the participant or legal representative.

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

“*Dementia-specific adult day services program*” means a program certified under this chapter that either serves five or more participants with dementia between stages four and seven on the Global Deterioration Scale or holds itself out as providing specialized care for persons with a cognitive disorder or dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Department*” means the department of elder affairs.

“*DIA*” means the department of inspections and appeals.

“*Functional impairment*” means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“*Global Deterioration Scale*” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“*Health care*” means services provided by a health care professional, allied health care professional or supervised designated health care giver on a part-time or intermittent basis.

“*Health care professional*” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“*Human service professional*” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

“*In the proximate area*” means located within a less-than-five-minute response time.

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

“*Modification*” means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

“Nonaccredited” means that the program has been certified under the provisions of this chapter but has not received accreditation from the entity named in subrule 24.14(1).

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

“Participant” means an adult with a functional impairment who meets eligibility requirements for the program and who has a contractual agreement with the program.

“Part-time or intermittent health-related care” means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

“Program” shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized in an adult day services program.

3. Adult day services provided to persons eligible for an adult day program as defined in this chapter.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific adult day services program standards equivalent to the standards established by the department.

“Remodeling” means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

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

“Self-administration” means a participant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the document that defines the services to meet the needs and preferences of a participant.

“Supervision of self-administration” means a staff person’s activities such as routine prompting and reminding, opening of containers or packaging at the direction of the participant, or reading instructions or other label information in order for a participant to self-administer a medication.

“Unmanageable incontinence” means a condition that requires staff provision of total care for an incontinent participant who lacks the ability to assist in bladder or bowel continence care.

“Visiting day(s)” means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing program eligibility and personal satisfaction. A written explanation of the expectations for the visiting day shall be provided.

321—24.2(231D) Program certification. New programs and existing accredited programs shall be certified and operated in accordance with Iowa Code Supplement chapter 231D and all applicable administrative rules. Programs not accredited by a recognized accrediting entity shall become certified by meeting all of the requirements set forth in 24.3(231D) and all requirements imposed by Iowa Code Supplement chapter 231D and this chapter. For the purpose of these rules, certification is equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

321—24.3(231D) Certification of a nonaccredited program.

24.3(1) The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained on the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult

Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

24.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address. The time frame for submission of the application shall be as follows:

- a. For a new operation, at least 60 calendar days prior to the expected date of beginning operation;
- b. For a program in operation on or before May 19, 2004, within 30 calendar days following compliance with structural and life safety requirements pursuant to 24.19(231D) and 24.41(231D).

24.3(3) The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and are payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

24.3(4) No application shall be considered by DIA until it is received with all supporting documents and fees.

321—24.4(231D) Nonaccredited program application content. An application for certification or recertification of a nonaccredited program shall include the following:

24.4(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the changes.

24.4(2) A statement affirming that the individuals listed in 24.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

24.4(3) A statement disclosing whether any of the individuals listed in 24.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or a licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

24.4(4) A copy of the current policy and procedure for evaluation of each participant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant.

24.4(5) Identification of target population.

24.4(6) A copy of the current service plan format.

24.4(7) If the program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity's current license or certification.

24.4(8) A copy of the current policy and procedure for addressing medication needs of participants.

24.4(9) A copy of the current policy and procedure describing accident and emergency response procedures.

24.4(10) A copy of the current participant contractual agreement.

24.4(11) A copy of the current policy and procedure for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

24.4(12) A copy of the current state license(s) for the entity providing food service, whether it is the program or an outside entity or a combination of both.

24.4(13) A copy of the written policies and procedures for food service that includes staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

321—24.5(231D) Initial certification process for nonaccredited program.

24.5(1) DIA shall determine whether or not the proposed adult day services program meets applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter upon receipt

of all completed documentation, including state fire marshal approval and structural and evacuation review approval.

24.5(2) DIA shall notify the applicant within five working days of any preliminary determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

24.5(3) The conditional certification shall allow the applicant to begin operation and accept participants into the program.

24.5(4) Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code Supplement chapter 231D and this chapter.

24.5(5) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within ten working days following receipt of the report.

24.5(6) DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

24.5(7) DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

24.5(8) If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

24.5(9) If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

321—24.6(231D) Recertification of nonaccredited program.

24.6(1) Certification of a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

24.6(2) DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

321—24.7(231D) Recertification process for nonaccredited program. To obtain recertification, a program shall:

24.7(1) Submit one copy of the completed application, associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 24.3(1) at least 90 calendar days prior to the expiration of the program's certification.

24.7(2) Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking area, laundry, and elevators.

321—24.8(231D) Notification of recertification.

24.8(1) DIA shall review the application and associated documentation and fees for completion and notify the program of application status within 10 working days of receipt of the required application materials.

24.8(2) DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

24.8(3) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10

working days following receipt of the report. Within 10 working days of receiving all documentation, including state fire marshal approval and an acceptable plan of correction, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter and make a recertification decision.

24.8(4) If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. Within 15 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231D and this chapter and make a recertification decision.

24.8(5) If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

24.8(6) If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

24.8(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—24.9(231D) Certification and recertification process for an accredited program.

24.9(1) An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following compliance with life safety requirements pursuant to this chapter for a program in operation on or before May 19, 2004.

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

24.9(2) DIA shall not consider an application until it is completed and received with all supporting documentation.

321—24.10(231D) Accredited program certification or recertification application content. An application for certification or recertification of a program shall include the following:

24.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change.

24.10(2) A statement affirming that the individuals listed in 24.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

24.10(3) A statement disclosing whether any of the individuals listed in 24.10(1) have or have had an ownership interest in a program, assisted living program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

24.10(4) Identification of target population.

24.10(5) A copy of the current accreditation outcome from the recognized accrediting entity.

321—24.11(231D) Initial certification process for accredited program.

24.11(1) DIA shall determine whether or not the accredited program meets applicable requirements contained in these rules and Iowa Code Supplement chapter 231D within 20 working days of receiving all finalized documentation, including state fire marshal approval.

24.11(2) DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

c. Certification for a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

321—24.12(231D) Recertification for accredited program.

24.12(1) DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

24.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation to DIA at the address stated in 24.9(1) at least 60 calendar days prior to the expiration of the program's certification.

24.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in these rules and make a recertification decision.

24.12(4) DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification will be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity.

b. If the determination is to deny recertification of the program, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

24.12(5) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—24.13(231D) Duration of certification for all programs.

24.13(1) Certification as a nonaccredited program by DIA will be applicable for two years, unless conditionally issued, suspended or revoked.

24.13(2) Certification as an accredited program by DIA will be applicable for the term of the accreditation, not to exceed three years, unless conditionally issued, suspended or revoked either by DIA or the recognized accrediting entity. DIA shall maintain a list of all certified programs. The list shall be readily available from DIA upon request.

321—24.14(231D) Recognized accrediting entity.

24.14(1) The department designates CARF as a recognized accrediting entity for programs.

24.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting organization shall submit a letter of request and meet the requirements found in this rule.

24.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet the minimum requirements of Iowa Code Supplement chapter 231D and this chapter.

24.14(4) The accrediting entity shall annually provide DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

321—24.15(231D) Requirements for accredited adult day services programs. Each accredited program shall:

24.15(1) Provide DIA a copy of the survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

24.15(2) Notify DIA by the most expeditious means possible of any credible report of alleged improper or inappropriate conduct or conditions and any actions taken by the accrediting entity with respect thereto.

24.15(3) Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

321—24.16(231D) Maintenance of program accreditation.

24.16(1) An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 24.15(231D).

b. The program maintains voluntary accreditation for the duration of the time-limited certification period.

24.16(2) A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

24.16(3) A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

321—24.17(231D) Transfer of certification.

24.17(1) A certificate, unless conditionally issued, suspended or revoked, may be transferable to a new owner/sponsor of a program.

24.17(2) The new owner/sponsor is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code Supplement chapter 231D and this chapter.

24.17(3) DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code Supplement chapter 231D and this chapter.

321—24.18(231D) Structural and life safety reviews for a new program.

24.18(1) Prior to construction or remodeling of a building for use in a new program, DIA shall review blueprints for compliance with requirements pursuant to 24.41(231D). Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

24.18(2) A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0038.

24.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in the delay of the blueprint plan review until the fee is received.

24.18(4) DIA shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

24.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA to state how any noncompliance with requirements will be resolved.

24.18(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the program may commence.

24.18(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance

with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

321—24.19(231D) Structural and life safety reviews for existing programs.

24.19(1) In lieu of a blueprint review, DIA shall conduct an on-site visit of the structure for a program in operation on or before May 19, 2004, for compliance with structural requirements pursuant to this chapter.

24.19(2) DIA shall notify the program applicant in writing of the status of compliance with requirements within ten working days following the on-site visit.

24.19(3) The program applicant shall resolve any noncompliance with requirements prior to approval for certification.

24.19(4) The program applicant shall submit with the application the preliminary plan review fee stated in 321—Chapter 27.

24.19(5) Failure to submit the preliminary plan review fee with the application shall result in the delay of review of the application for certification until the fee is received.

321—24.20(231D) Structural and life safety review prior to the remodeling of a building for certified programs.

24.20(1) Prior to the remodeling of a building for a program, DIA shall review the blueprints for compliance with requirements pursuant to 24.41(231D).

24.20(2) A certified program shall submit blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 to DIA at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

24.20(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

24.20(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

24.20(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

24.20(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the program may commence.

24.20(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

321—24.21(231D) Emergency response policies and procedures review. A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 24.3(1). Failure to submit the emergency policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements pursuant to this chapter.

321—24.22(231D) Program alteration. A program shall notify DIA within ten working days of any operational changes that are a deviation from the most current certification or recertification application and associated documentation.

321—24.23(231D) Cessation of program operation.

24.23(1) If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate and written notice to DIA at least 90 days in advance of closure unless there is some type of emergency.

24.23(2) If a certified program plans to cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA and the department at least 90 calendar days prior to expiration of the certification.

24.23(3) At the time the program decides to cease operations, the program shall submit plans to DIA and make arrangements for the safe and orderly transfer of all participants within the 90-day period specified by subrule 24.23(2).

24.23(4) DIA or another appropriate agency shall do on-site monitoring during the 90-day period to ensure the safety of participants during the transfer process.

24.23(5) DIA may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

321—24.24(231D) Contractual agreement.

24.24(1) At the time of a participant's admission, the participant and the program shall enter into a contractual agreement that clearly describes the rights and responsibilities of the participant and of the program.

24.24(2) The contractual agreement shall be in 12-point type or larger and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the participant or the participant's legal representative.

24.24(3) The contractual agreement shall state current certification status of the program and contain language stating that the program complies with all state and federal codes, administrative rules and federal regulations applicable to adult day services.

24.24(4) Upon admission, each participant or legal representative, if applicable, shall sign a contractual agreement and a managed risk policy disclosure statement.

24.24(5) The written contractual agreement shall include, but not be limited to, the following:

- a. A description of all fees, scheduled days, transportation agreements, charges and rates;
- b. A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources will be accepted by the program;
- c. The procedure to be followed if a participant fails to make payment;
- d. Identification of the party responsible for payment of fees;
- e. A statement that the program will give written notification to the participant at least 30 days in advance of any changes to the contractual agreement;
- f. A statement that all participant information will be maintained in a confidential manner to the extent allowable under state and federal law;
- g. The toll-free number for the dependent adult abuse hotline;
- h. The telephone number for filing a complaint with DIA.

24.24(6) The program shall maintain written documentation of the participant's or legal representative's receipt of the following:

- a. A copy of admission and transfer criteria;
- b. A copy of the internal appeal process for involuntary transfer;
- c. A copy of the emergency response policy;
- d. A copy of the staffing policy which identifies how staffing will be adapted to changing participant needs;
- e. A copy of the services and programming provided to meet the life skills and social activity needs of participants;
- f. A procedure for filing a complaint with DIA, including contact information;
- g. A copy of the program's statement on participants' rights.

24.24(7) A participant who is subject to an involuntary transfer initiated solely by the program and not as a result of a monitoring evaluation or complaint investigation by DIA shall not be transferred until an internal appeal process is completed if one is requested by the participant or legal representative.

24.24(8) A copy of the contract shall be provided to the participant or legal representative, if any, and the program shall keep a copy.

24.24(9) The contractual agreement shall be reviewed and updated as necessary to reflect the changes in the services and financial arrangements.

24.24(10) A copy of the contractual agreement form shall be made available to the general public upon request. The basic marketing material shall include a statement that the contractual agreement is available to all persons upon request.

321—24.25(231D) Admission to and transfer from a program.

24.25(1) *Evaluation prior to admission or transfer.* A program shall, upon a participant's admission or transfer, evaluate each proposed participant's functional, cognitive and health status and abilities to determine the participant's eligibility for the program, including whether needed services can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

24.25(2) *Evaluation within 30 days of admission or transfer.* After the participant's initial evaluation, a program shall evaluate each participant's functional, cognitive and health status and abilities within 30 days and then at least annually or more often as needed, to determine the participant's continued eligibility for the program and to determine any modifications to needed services. The evaluation shall be conducted by a health care professional or a human service professional.

24.25(3) *Criteria for exclusion of participants.* A program shall not knowingly admit or retain a participant who:

- a. Is bed-bound; or
- b. Requires routine three-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or others, including but not limited to a participant who:
 - (1) Despite intervention, chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another participant at risk; or
- d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e. Is under age 18; or
- f. Requires more than part-time or intermittent health-related care; or
- g. On a routine basis has unmanageable incontinence.

24.25(4) *Disclosure of additional admission or transfer criteria.* A program may have additional admission or transfer criteria if disclosed in the written contractual agreement prior to admission.

24.25(5) *Assistance with transfer.* A program shall provide assistance to a participant and legal representative, if applicable, to ensure a safe and orderly transfer when the participant meets program transfer requirements.

24.25(6) *Appeal of an involuntary transfer.* Under contractual agreement, each participant shall have the right to an internal appeal of an involuntary transfer.

24.25(7) *Visiting days.* A program may choose to allow a visiting day(s) prior to admission.

321—24.26(231D) Waiver of admission and retention criteria.

24.26(1) Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the admission and retention criteria under 24.27(231D) for an individual participant on a time-limited basis.

24.26(2) Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the admission and retention criteria:

- a. A program shall submit a request on a form and in a manner designated by DIA for a waiver from the admission and retention criteria for an individual participant as soon as it becomes apparent that a participant meets the transfer criteria;
- b. DIA shall respond in writing to a request within two working days of receipt of required documentation;
- c. The program shall notify DIA within five working days of any changes in the condition of the participant as described in the approved waiver request.

321—24.27(231D) Criteria for granting admission and retention waivers. DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the participant or legal representative, if applicable, to remain in the program; and
2. The program is able to obtain the staff necessary to meet the participant's service needs in addition to the service needs of the other participants; and
3. The waiver shall not jeopardize the health, safety, security or welfare of the party for whom the waiver is being requested or other program participants or program staff.

321—24.28(231D) Participant documents.

24.28(1) A file for each participant shall be maintained at the program and shall contain:

- a. Admission record, including participant's name, birth date, and home address; identification numbers; date of admission; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b. Application forms;
- c. Initial evaluations and updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the participant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health professional, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the participant's contractual agreement including any updates;
- k. Written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;
- l. Copy of guardianship, power of attorney, conservatorship or other documentation of a legal representative as necessary.

24.28(2) The program records relating to a participant shall be retained for a minimum of three years after the transfer or death of the participant before the records are destroyed.

24.28(3) All records shall be protected from loss, damage and unauthorized use.

321—24.29(231D) Service plan.

24.29(1) A service plan shall be developed for each participant based on the evaluation conducted under 24.25(1) and 24.25(2) and designed to meet the specific service needs of the individual participant.

24.29(2) Upon admission of a participant, an initial service plan shall be developed by a health care professional or human service professional in consultation with the participant and, if applicable, with the legal representative. All persons who develop the plan and the participant or legal representative shall sign the plan.

24.29(3) The service plan shall be updated within 30 days of the participant's admission and shall subsequently be updated at least annually and whenever changes are needed. The service plan shall be updated in consultation with a multidisciplinary team that consists of at least three individuals, including a health care professional and other staff as appropriate to meet the needs of the participant, in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative.

24.29(4) The service plan shall be individualized and shall indicate, at a minimum:

- a. The participant's identified needs and participant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the occupancy agreement with the participant;
- c. The provider(s) if other than the program; and

d. For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

321—24.30(231D) Medications.

24.30(1) Each program shall have a written medication policy that includes the following:

a. Participants shall self-administer medications unless:

(1) The prescription states that the participant is not to self-administer the medication; or

(2) The participant or, if applicable, the legal representative, delegates administration to the program by contractual agreement or signed service plan. The program shall not prohibit a participant from self-administering medications.

b. Participants shall keep their own medications in their possession unless:

(1) The prescription states that the medication is to be stored by the program; or

(2) The participant or, if applicable, the legal representative delegates partial or complete control of medications to the program by contractual agreement or signed service plan.

c. The program shall list in the participant's record any medications to be stored or administered by the program.

d. When partial or complete control of medication is delegated to the program by the participant, appropriate staff may transfer medication from the original prescription containers into medication reminder boxes or medication cups in the participant's presence.

24.30(2) When the medications are administered or stored by the program, the following requirements shall apply:

a. The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.

b. The program shall document any medication the program has agreed to administer or store.

c. The medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

d. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

e. No person other than the dispensing pharmacist shall alter a prescription label.

f. The program shall follow a written policy that complies with federal and state codes and administrative rules regarding controlled substances.

g. The program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—24.31(231D) Nurse review. A program that administers prescription medications or provides health care professional-directed or health-related care shall provide for a registered nurse to:

24.31(1) Monitor, at least every 90 days, each participant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders at least every 90 days or after a change in health status; and

24.31(2) Ensure that health professionals' orders for participants receiving health care professional-directed care from the program are current; and

24.31(3) Assess and document the health status of each participant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

24.31(4) Provide the program with written documentation of the activities, as set forth in 24.31(1) through 24.31(3), showing the date, time and signature.

321—24.32(231D) Nursing assistant work credit.

24.32(1) A person certified as a nursing assistant who is supervised by a licensed nurse in the program may submit information to DIA to obtain credit toward maintaining certification for working in the program.

24.32(2) The program shall complete and submit to DIA an Iowa Nurse Aide Registry Application for each nursing assistant working in the program. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides/> under the “Resource” tab.

24.32(3) The program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides/> under the “Resource” tab.

321—24.33(231D) Food service.

24.33(1) The program shall have the capacity to provide hot or other appropriate meals and snacks or coordinate with other community providers to make arrangements for the availability of meals and snacks. A period of no more than four hours shall lapse between the service of meals and of snacks.

24.33(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

24.33(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 1/3 percent if the program provides one meal per day;
- b. A minimum of 66 2/3 percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

24.33(4) Therapeutic diets are not required but may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual, Iowa State Press, shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and reviewing procedures for preparation and service of food for therapeutic diets.

24.33(5) Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

24.33(6) Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

321—24.34(231D) Staffing.

24.34(1) Sufficient trained staff shall be available at all times to fully meet participants’ identified needs. No fewer than two staff persons who monitor participants as indicated in each participant’s service plan shall be awake and on duty during all hours of operations when two or more participants are present.

24.34(2) A program that serves one or more participants with cognitive disorder or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participant(s).

24.34(3) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and the target population.

24.34(4) Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

24.34(5) The program shall have a training and staffing plan on file and shall maintain documentation of training received by program personnel.

24.34(6) All personnel of a program shall be able to implement the program's accident, fire safety and emergency procedures.

321—24.35(231D) Dementia-specific education for personnel.

24.35(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

24.35(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with activities of daily living;
- h. The importance of the care plan and social history information;
- i. Skills in working with challenging participants;
- j. Techniques for simplifying, cueing, and redirecting; and
- k. Staff support and stress reduction.

24.35(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

321—24.36(231D) Another business or activity in an adult day services program.

24.36(1) A business or activity serving persons other than participants is allowed in a designated part of the physical structure in which the program is provided, if the other business or activity meets the requirements of the applicable state and federal codes, administrative rules, and federal regulations.

24.36(2) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not interfere with the use of the program by participants, or interfere with services provided to participants or be disturbing to participants.

24.36(3) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not reduce space, services or staff available to participants or necessary to meet the needs of the participants.

321—24.37(231D) Managed risk statement. The program shall have a managed risk statement which includes the participant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting needs of the participant and the process for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

321—24.38(231D) Life safety—emergency policies and procedures and structural safety requirements.

24.38(1) The program shall have and follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;

- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Fire drill procedures;
- g. Regulations about smoking;
- h. Interior and exterior maintenance of buildings and grounds;
- i. Furnishings;
- j. Monitoring and testing of smoke-control systems;
- k. Evacuation of participants; and
- l. Procedures for reporting and documentation.

24.38(2) A program that serves persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a participant with cognitive impairment or dementia is missing.

24.38(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the facility is in compliance with these requirements is necessary for certification of a program.

321—24.39(231D) Transportation. When transportation services are provided directly or under contract with the program:

1. The vehicle shall be accessible and appropriate to the participants using it, with consideration for any physical disabilities and impairments.
2. Every participant who is being transported shall have a seat in the vehicle, except those participants who remain in their wheelchairs.
3. Wheelchairs shall be secured when the vehicle is in motion.
4. Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.
5. During loading and unloading of a participant, the driver shall be in the proximate area of the other participants in a vehicle.
6. Assistance, if needed, shall be provided from the ground floor of the participant's residence to the ground floor of the facility.
7. The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. The driver shall meet any state and federal requirements for licensure or certification for the vehicle operated.
8. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

321—24.40(231D) Activities.

24.40(1) The program shall provide appropriate activities for each program participant. The type of activities shall reflect a participant's preferences, abilities, desires, history, family system, ethnic and cultural experiences, faith community, personal beliefs and values by providing a variety of opportunities and experiences that have meaning and purpose for the program participant.

24.40(2) Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and admission policies.

24.40(3) A written schedule of activities shall be developed at least monthly and made available to participants or their legal representatives.

24.40(4) Participants shall be given the opportunity to select the degree to which they choose to participate in all activities offered in the program.

24.40(5) Appropriate activities shall be offered at all times when participants are present.

321—24.41(231D) Structural requirements.

24.41(1) The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

24.41(2) There shall be at least one toilet for every ten participants and staff members.

24.41(3) Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

24.41(4) There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

24.41(5) Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

24.41(6) Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

24.41(7) A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

24.41(8) Program supplies and participants' possessions shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

24.41(9) The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

24.41(10) The program shall meet other building and public safety codes, including:

- a. Americans with Disabilities Act.
- b. Applicable regulations of the Occupational Safety and Health Administration.
- c. Rules pertaining to accessibility contained in the Iowa state building code, administration section, division 7, and provisions of the Iowa state building code relating to persons with disabilities.
- d. Other applicable provisions of the Iowa state building code and local building codes.

24.41(11) The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall do so for participants with cognitive impairment or dementia or at the request of a participant.

321—24.42(231D) Interpretive guidelines. The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code Supplement chapter 231D.

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CHAPTER 25
ASSISTED LIVING PROGRAMS
[Prior to 4/14/04, see 321—Ch 27]

321—25.1(231C) Definitions.

“*Accredited*” means that the program has received accreditation from the entities named in subrule 25.14(1).

“*Allied health care professional*” means a person licensed through the department of public health, other than a physician, physician assistant, registered nurse or advanced registered nurse practitioner, who provides health care services to the tenant.

“*Assistance*” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“*Assisted living*” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure, which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. The requirements of this chapter are applicable to all assisted living facilities. There may be other requirements for specific facilities contained in other chapters under agency number 321.

“*CARF*” means the Rehabilitation Accreditation Commission.

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

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

“*Dementia-specific assisted living program*” means an assisted living program certified under this chapter that either serves five or more tenants with dementia between Stages 4 and 7 on the Global Deterioration Scale or holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Department*” means the department of elder affairs.

“*DIA*” means the department of inspections and appeals.

“*Dwelling unit*” means an apartment, group of rooms, or single room that is occupied as a separate living quarter or, if vacant, that is intended for occupancy as a separate living quarter, in which the occupant(s) can live and sleep separately from any other persons in the building and that has direct access from the outside of the building or through a common hall.

“*Global Deterioration Scale*” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“*Health care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis.

“*Health care professional*” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“*Human service professional*” means an individual with at least a bachelor’s degree in a human service field including human services, gerontology, social work, sociology, psychology, and family science. Experience in a human service field may be substituted for up to two years of required education.

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

“In the proximate area” means located within a less-than-five-minute response time.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

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

“Modification” means any addition to or change in dimensions or structure except as incidental to the customary maintenance of the program structure.

“Nonaccredited” means that the program has been certified under the provisions of this chapter but has not received accreditation from the entities named in subrule 25.14(1).

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

“Occupancy agreement” means a written contract entered into between an assisted living program and a tenant that clearly describes the rights and responsibilities of the assisted living program and the tenant and other information required by rule. The occupancy agreement may include a separate signed lease and signed service agreement.

“Part-time or intermittent care” means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for temporary periods of time with a predictable end within 21 days; or licensed nursing services and professional therapies in combination with nurse-delegated assistance with medications or activities of daily living that do not exceed 28 hours per week.

“Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, housekeeping essential to the health and welfare of the tenant, and supervising of self-administered medications, but does not include the administration of medications.

“Program” shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized in an assisted living program.

3. Services provided to persons eligible for assisted living residency as defined in this chapter.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific assisted living program standards equivalent to the standards established by the department.

“Remodeling” means modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

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

“Self-administration” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“Service plan” means the document that defines the services to meet the needs and preferences of a tenant.

“Supervision of self-administration” means a staff person’s activities such as routine prompting and reminding, opening of containers or packaging at the direction of the tenant, or reading instructions or other label information in order for a tenant to self-administer a medication.

“Tenant” means an individual who receives assisted living services pursuant to an occupancy agreement through a certified assisted living program.

“Tenant advocate” means the office of long-term care resident’s advocate established in Iowa Code Supplement section 231.42.

“Unmanageable incontinence” means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

“Wandering behavior” means a behavioral problem of disorientation and difficulty relating to the environment with aimless or purposeful motor activity that causes a social problem such as getting lost, leaving a safe environment or intruding in inappropriate places.

321—25.2(231C) Program certification. A program may become certified by meeting all the requirements in Iowa Code Supplement chapter 231C and the applicable rules of this chapter. In addition, a program may be voluntarily accredited by either CARF or JCAHO. For the purpose of these rules, certification is equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

321—25.3(231C) Certification of a nonaccredited program.

25.3(1) The applicant shall complete an approved application packet obtained from the department of inspections and appeals (DIA). Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

25.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to DIA at the above address at least 60 calendar days prior to the expected date of beginning operation.

25.3(3) The appropriate fees, as stated in 321—Chapter 27, shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. The fees are nonrefundable.

25.3(4) DIA shall consider the application when all supporting documents and fees are received.

321—25.4(231C) Nonaccredited program application content. An application for certification or recertification of a nonaccredited program shall include the following:

25.4(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the changes.

25.4(2) A statement affirming that the individuals listed in 25.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

25.4(3) A statement disclosing whether any of the individuals listed in 25.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

25.4(4) A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant.

25.4(5) Identification of target population.

25.4(6) A copy of the current service plan format.

25.4(7) If the program contracts for personal care or health-related care services from a certified home health agency, mental health center or a licensed health care facility, a copy of that entity’s current license or certification.

25.4(8) The current policy and procedure for addressing medication needs of tenants.

25.4(9) The current policy and procedure describing accident and emergency response.

25.4(10) A copy of the current tenant occupancy agreement.

25.4(11) The current policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

25.4(12) A copy of the current state license for the entity providing food service, whether it is the program or an outside entity or a combination of both.

25.4(13) A copy of the written policies and procedures for food service relating to staffing, nutrition, menu planning, therapeutic diets, preparation, service and storage.

321—25.5(231C) Initial certification process for a nonaccredited program.

25.5(1) DIA shall determine whether or not the proposed program meets applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval.

25.5(2) DIA shall notify the applicant within 5 working days of any preliminary certification determination.

a. If the determination is to certify, DIA shall issue a conditional certification not to exceed one year.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

25.5(3) A conditional certification shall allow the applicant to begin operation and accept tenants into the program.

25.5(4) Within 90 calendar days following issuance of conditional certification, DIA shall conduct an on-site monitoring evaluation to determine compliance with the provisions of Iowa Code Supplement chapter 231C and this chapter.

25.5(5) If regulatory insufficiencies are identified as a result of the on-site monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report.

25.5(6) DIA shall make a final certification decision based on the results of the monitoring evaluation and review of an acceptable plan of correction.

25.5(7) DIA shall notify the program of a final certification decision within 10 working days following the finalization of the on-site monitoring evaluation report or receipt of an acceptable plan of correction, whichever is applicable.

25.5(8) If the decision is to continue certification, DIA shall issue a full two-year certification effective from the date of the original conditional certification.

25.5(9) If the decision is to discontinue certification through denial, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

321—25.6(231C) Recertification of a nonaccredited program.

25.6(1) Certification of a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

25.6(2) DIA shall send recertification application materials to each program at least 120 calendar days prior to expiration of its certification.

321—25.7(231C) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

25.7(1) Submit one copy of the completed application, including the information required in 25.4(231C), associated documentation and the recertification fee as listed in 321—Chapter 27 to DIA at the address stated in 25.3(1) at least 90 calendar days prior to the expiration of the program's certification.

25.7(2) Submit additional documentation that the following systems have been inspected by a qualified professional and are found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating, cooling, water heater, electricity,

plumbing, sewage, artificial light, and ventilation; and, if located on site, garbage disposal, cooking area, laundry, and elevators.

321—25.8(231C) Notification of recertification for a nonaccredited program.

25.8(1) DIA shall review the application and associated documentation and fees for completion and notify the program of application status within 10 working days of receipt of the required application materials.

25.8(2) DIA shall conduct an on-site monitoring evaluation of the program between 60 and 90 days prior to expiration of the program's certification.

25.8(3) If regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings to the program by certified mail within 20 working days following the monitoring evaluation. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. Within 10 working days of receiving all finalized documentation, including state fire marshal approval and an acceptable plan of correction, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

25.8(4) If no regulatory insufficiencies are identified as a result of the monitoring evaluation, DIA shall issue a report of the findings with the final recertification decision. Within 15 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231C and this chapter and make a recertification decision.

25.8(5) If the decision is to recertify, DIA shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

25.8(6) If the decision is to deny recertification, DIA shall provide the program the opportunity for a hearing under 321—26.4(17A,231C,231D).

25.8(7) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.9(231C) Certification and recertification process for an accredited program.

25.9(1) An applicant program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from DIA. Application materials may be obtained from the health facilities division Web site at www.dia-hfd.state.ia.us; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from a recognized accrediting entity.

c. Apply for certification within 30 calendar days following verification of compliance with life safety requirements pursuant to this chapter for a program in operation on or before May 19, 2004.

d. Apply for recertification within 60 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

e. Maintain compliance with life safety requirements pursuant to this chapter.

f. Submit the appropriate fees as set forth in 321—27.2(231C).

25.9(2) DIA shall not consider an application until it is complete and received with all supporting documentation and the appropriate fees.

321—25.10(231C) Accredited program certification or recertification application content. An application for certification or recertification of an accredited program shall include the following:

25.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The program shall notify DIA of any changes in the list within ten working days of the change.

25.10(2) A statement affirming that the individuals listed in 25.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

25.10(3) A statement disclosing whether any of the individuals listed in 25.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, or licensed health care facility as defined under Iowa Code Supplement section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

25.10(4) Identification of target population.

25.10(5) A copy of the current accreditation outcome from the recognized accrediting entity.

321—25.11(231C) Initial certification process for an accredited program.

25.11(1) DIA shall determine whether or not the accredited program meets applicable requirements contained in Iowa Code Supplement chapter 231C and these rules within 20 working days of receiving all finalized documentation, including state fire marshal approval.

25.11(2) DIA shall notify the accredited program within 10 working days of the final certification decision.

a. If the decision is to certify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny certification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

c. Certification for a program, unless conditionally issued, suspended or revoked, shall expire at the end of the time period specified on the certificate.

321—25.12(231C) Recertification process for an accredited program.

25.12(1) DIA shall send recertification application materials to each program at least 90 calendar days prior to expiration of its certification.

25.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application and associated documentation including the administrative fee as stated in 321—27.2(231C) to DIA at the address stated in 25.9(231C) at least 60 calendar days prior to the expiration of the program's certification.

25.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, DIA shall determine the program's compliance with applicable requirements contained in these rules and make a recertification decision.

25.12(4) DIA shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either DIA or the recognized accrediting entity.

b. If the determination is to deny recertification, DIA shall provide the applicant the opportunity for hearing in accordance with 321—26.4(17A,231C,231D).

25.12(5) If DIA is unable to recertify a program through no fault of the program, DIA shall issue a time-limited extension to the program.

321—25.13(231C) Duration of certification for all programs.

25.13(1) Certification as a nonaccredited program by DIA shall be applicable for two years, unless conditionally issued, suspended or revoked.

25.13(2) Certification as an accredited program by DIA shall be applicable for the term of the accreditation not to exceed three years, unless conditionally issued, suspended or revoked by either

DIA or the recognized accrediting entity. DIA shall maintain a list of all certified programs. The list shall be readily available at DIA upon request.

321—25.14(231C) Recognized accrediting entity.

25.14(1) The department designates CARF and JCAHO as recognized accrediting entities for programs.

25.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting organization shall submit a letter of request and meet the accrediting entity requirements in this rule.

25.14(3) The designation shall remain in effect for so long as the accreditation standards continue to meet the minimum requirements of Iowa Code Supplement chapter 231C and this chapter.

25.14(4) The accrediting entity shall provide annually to DIA and the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 20 working days after the publication is released.

321—25.15(231C) Requirements for an accredited program. Each accredited program shall:

25.15(1) Provide DIA a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

25.15(2) Notify DIA by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the accredited program and any actions taken by the accrediting entity with respect thereto.

25.15(3) Notify DIA within two working days of the expiration, suspension, revocation or other loss of a program's accreditation.

321—25.16(231C) Maintenance of program accreditation.

25.16(1) An accredited program shall continue to be recognized for certification by DIA if both of the following requirements are met:

a. The program complies with the requirements outlined in 25.15(231C).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

25.16(2) A program that does not maintain its voluntary accreditation status must become certified by DIA prior to any lapse in accreditation.

25.16(3) A program that does not maintain its voluntary accreditation status and is not certified by DIA prior to any lapse in voluntary accreditation shall be considered an uncertified program.

321—25.17(231C) Transfer of certification.

25.17(1) A certificate, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program.

25.17(2) The new owner is required to notify DIA in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all requirements of Iowa Code Supplement chapter 231C and this chapter.

25.17(3) DIA may conduct an on-site monitoring evaluation within 90 days following a change in ownership or management corporation to ensure that the program complies with requirements and shall take any necessary enforcement action authorized by Iowa Code Supplement chapter 231C and this chapter.

321—25.18(231C) Structural and life safety reviews for a new program.

25.18(1) Prior to construction or remodeling of a building for use in a new program, DIA shall review the blueprints for compliance with requirements pursuant to this chapter. Construction and remodeling shall include new construction, modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.18(2) A program applicant shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.18(4) DIA shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA to state how any noncompliance with requirements will be resolved.

25.18(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, construction or remodeling of the program may commence.

25.18(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for certification.

321—25.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.

25.19(1) Prior to the remodeling of a building for a certified program, DIA shall review the blueprints for compliance with requirements pursuant to 25.40(231C). Remodeling shall include modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

25.19(2) A certified program shall submit to DIA blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in 321—Chapter 27 at Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

25.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

25.19(4) DIA shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

25.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to DIA within 20 working days to state how any noncompliance with requirements will be resolved.

25.19(6) Upon final notification by DIA that the blueprints meet structural and life safety requirements, remodeling of the program may commence.

25.19(7) DIA shall schedule an on-site visit of the program with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance with requirements must be resolved prior to approval for continued certification or recertification.

321—25.20(231C) Emergency response policies and procedures review. A program applicant or certified program shall submit emergency response policies and procedures with the application to DIA at the address stated in 25.3(1). Failure to submit the emergency response policies and procedures with the application shall delay the review of the application for certification until receipt of the information. The emergency response policies and procedures shall comply with the requirements of this chapter.

321—25.21(231C) Cessation of program operation.

25.21(1) If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate to DIA. The program shall provide, at least 90 days in advance of closure unless there is some type of emergency, written notification to DIA, the department, and the tenant advocate of the date the operation will cease.

25.21(2) If a certified program plans to cease operation at the time the program's certification expires, the program shall provide written notice of this fact to DIA, the department and the tenant advocate at least 90 days prior to expiration of the certification.

25.21(3) At the time a program decides to cease operation, the program shall submit a plan to DIA and make arrangements for the safe and orderly transfer of all tenants within the 90-day period specified by 25.21(2).

25.21(4) DIA or another appropriate agency shall conduct on-site monitoring during the 90-day period to ensure safety of tenants during the transfer process.

25.21(5) DIA may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

321—25.22(231C) Occupancy agreement.

25.22(1) Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the program shall enter into an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the program, and shall sign a managed risk policy disclosure statement.

25.22(2) The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

25.22(3) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

a. A description of all fees, charges, and rates describing tenancy and basic services covered, and any additional and optional services and their related costs.

b. A statement regarding the impact of the fee structure on third-party payments, and whether third-party payments and resources are accepted by the assisted living program.

c. The procedure followed for nonpayment of fees.

d. Identification of the party responsible for payment of fees and identification of the tenant's representative, if any.

e. The term of the occupancy agreement.

f. A statement that the assisted living program shall notify the tenant or the tenant's representative, as applicable, in writing at least 30 days prior to any change being made in the occupancy agreement with the following exceptions:

(1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.

(2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the assisted living program.

g. A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.

h. Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer. The internal appeals process provided relative to an involuntary transfer.

i. The program's policies and procedures for addressing grievances between the assisted living program and the tenants, including grievances relating to transfer and occupancy.

j. A statement of the prohibition against retaliation as prescribed in Iowa Code Supplement section 231C.13.

k. The emergency response policy.

l. The staffing policy which specifies if the staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.

m. In dementia-specific assisted living programs, a description of the services and programming provided to meet the life skills and social activities of tenants.

n. The refund policy.

o. A statement regarding billing and payment procedures.

- p. The telephone number for filing a complaint with DIA.
- q. The telephone number for the office of the tenant advocate.
- r. A copy of the program's statement on tenants' rights.
- s. A statement that the tenant landlord law applies to assisted living programs.

25.22(4) A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

25.22(5) The occupancy agreement shall be reviewed and updated as necessary to reflect the change in the services and financial arrangements.

25.22(6) A copy of the most current occupancy agreement form shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

25.22(7) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—25.23(231C) Occupancy in and transfer from a program.

25.23(1) *Evaluation prior to occupancy.* A program shall evaluate each proposed tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy in order to determine the tenant's eligibility for the program, including whether services needed can be provided. The evaluation shall be conducted by a health care professional or a human service professional.

25.23(2) *Evaluation within 30 days of occupancy.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy and as needed, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any modifications to services needed. The evaluation shall be conducted by a health care professional or a human service professional.

25.23(3) *Criteria for exclusion of tenants.* A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine two-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or
- d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e. Is under the age of 18; or
- f. Requires more than part-time or intermittent health-related care; or
- g. On a routine basis, has unmanageable incontinence.

25.23(4) *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if disclosed in the written occupancy agreement prior to occupancy.

25.23(5) *Assistance with transfer.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer when the tenant meets program transfer requirements.

25.23(6) *Right to appeal involuntary transfer.* Under the occupancy agreement and Iowa Code Supplement section 231C.6, each tenant shall have the right to an internal appeal of an involuntary transfer.

321—25.24(231C) Waiver of occupancy and retention criteria.

25.24(1) Upon receipt of a waiver petition submitted by a program, DIA may grant a waiver of the occupancy and retention criteria under 25.25(231C) for an individual tenant on a time-limited basis.

25.24(2) Waiver procedures. The following procedures shall be used to request and to receive approval of a waiver from the occupancy and retention criteria:

a. A program shall submit a request for a waiver from the occupancy and retention criteria for an individual tenant on a form and in a manner designated by DIA as soon as it becomes apparent that a tenant meets the criteria.

b. DIA shall respond in writing to a request within two working days of receipt of required documentation.

c. The program shall provide written notification to DIA within five working days of any changes in the condition of the tenant as described in the approved waiver request.

321—25.25(231C) Criteria for granting occupancy and retention waivers. DIA shall use the following criteria in granting a waiver:

1. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program; and

2. The program is able to obtain the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants; and

3. The waiver shall not jeopardize the health, safety, security or welfare of the tenant for whom the waiver is being requested, program staff, or other program tenants.

321—25.26(231C) Involuntary transfer.

25.26(1) Program initiation of transfer. If a program initiates the involuntary transfer of a tenant and the action is not a result of a monitoring evaluation or complaint investigation by DIA, and if the tenant or tenant's legal representative contests the transfer, the following procedure shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer, the reason for the transfer, and the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification to the tenant.

c. The tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

25.26(2) Transfer pursuant to results of monitoring evaluation or complaint investigation by DIA. If one or more tenants are identified as meeting the occupancy and transfer criteria and need to be transferred as a result of a monitoring evaluation or complaint investigation conducted by DIA, the following procedures shall apply:

a. DIA shall notify the program, in writing, within 20 working days of the monitoring evaluation or complaint investigation, of the identification of any tenant(s) meeting occupancy and transfer criteria, as a part of the report of the findings.

b. The program, each tenant identified, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide specific input, written comment, information and documentation directly addressing any agreement or disagreement with the identification.

c. The program shall submit one response, including all inputs received, to DIA. The response shall identify the tenant and others submitting input, and also identify with particularity their agreement or disagreement. The program's response shall be submitted to DIA within 10 working days of the receipt of the report of the findings. Submission of a response does not eliminate the requirement under this chapter or 321—Chapter 26 to submit a plan of correction to address the regulatory insufficiency.

d. Within 10 working days of receipt of the program's response for each identified tenant, DIA shall consider the response and make a determination regarding continued inclusion of a tenant.

e. If DIA's determination is to amend the regulatory insufficiency based on the response, DIA shall modify the report of findings and send an amended report to the program.

f. If the determination is to uphold the regulatory insufficiency, DIA shall review the plan of correction in accordance with this chapter and 321—Chapter 26. DIA shall notify the program of the opportunity for the program or the tenant or the tenant’s legal representative, as applicable, to appeal the report findings as they relate to the occupancy and transfer decision. In addition, DIA shall provide to the tenant or the tenant’s legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

g. For each tenant identified in the final report, if the program is in agreement with the report and the tenant or the tenant’s legal representative, if applicable, disagrees with the report, the tenant or the tenant’s legal representative, if applicable, may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

h. For each tenant identified in the final report, if the tenant or the tenant’s legal representative, if applicable, and the program disagree with the report, both parties may appeal the decision to DIA in accordance with 321—subrule 26.3(2).

i. The tenant advocate shall offer the notified tenant or tenant’s legal representative, if applicable, assistance with the appeal process. The tenant or the tenant’s legal representative, if applicable, is not obligated to use the services of the tenant advocate.

j. Any appeal filed under 321—subrule 26.3(2) shall stay any enforcement action regarding the regulatory insufficiency related to the occupancy and transfer decision and shall be heard within 30 days of receipt of the appeal.

k. Actions regarding any regulatory insufficiency, other than the occupancy and transfer decision, shall follow procedures as provided in Iowa Code Supplement chapter 231C, this chapter and 321—Chapter 26.

l. An appeal under 321—subrule 26.3(2) shall automatically extend the expiration date of the program’s certification until such time as the administrative case is resolved.

m. In lieu of or in addition to the provisions of this subrule, the program may request a waiver from DIA within 10 working days of the receipt of the report to allow a tenant to remain in the program. DIA may grant a waiver for a period not to exceed 90 calendar days.

321—25.27(231C) Tenant documents.

25.27(1) A file for each tenant shall be maintained at the program and shall contain:

a. An occupancy record including the tenant’s name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

c. Initial evaluation and updates;

d. Nutritional assessment as necessary;

e. Initial individual service plan and updates;

f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;

g. Signed authorization for the tenant to receive emergency medical care if necessary;

h. When appropriate, medical information sheet, documentation of health professionals’ order, treatment, therapy, medication and service notes;

i. Advance health care directives as applicable;

j. A complete copy of the tenant’s occupancy agreement including any updates;

k. Written acknowledgement that the tenant or the tenant’s legal representative, if applicable, has been fully informed of the tenant’s rights;

l. A copy of guardianship, power of attorney, or conservatorship or other documentation of a legal representative as necessary.

25.27(2) The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

25.27(3) All records shall be protected from loss, damage and unauthorized use.

321—25.28(231C) Service plan.

25.28(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with 25.23(1) and 25.23(2), and shall be designed to meet the specific service needs of the individual tenant.

25.28(2) Prior to the tenant's signing the occupancy agreement and taking occupancy, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan. The service plan shall subsequently be updated at least annually and whenever changes are needed.

25.28(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of occupancy and as needed, but not less than annually, by a multidisciplinary team that consists of no fewer than three individuals, including a health care professional and other staff appropriate to meet the needs of the tenant, in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative.

25.28(4) The service plan shall be individualized and shall indicate, at a minimum:

- a. The tenant's identified needs and the tenant's requests for assistance and expected outcomes;
- b. Any services and care to be provided pursuant to the occupancy agreement with the tenant;
- c. The service provider(s) if other than the program; and
- d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests.

321—25.29(231C) Medications.

25.29(1) Each program shall follow a written medication policy that includes the following:

- a. Tenants shall self-administer medications unless:
 - (1) The prescription states that the tenant is not to self-administer the medication; or
 - (2) The tenant or the tenant's legal representative delegates administration of the medication to the program in the occupancy agreement or signed service plan. The program shall not prohibit a tenant from self-administering medications.
- b. Tenants shall keep their own medications in their possession unless:
 - (1) The prescription states that the medication is to be stored by the program; or
 - (2) The tenant or the tenant's legal representative, if applicable, delegates partial or complete control of medications to the program in the occupancy agreement or signed service plan.
- c. The program shall list in the tenant's record any medications to be stored or administered by the program.
- d. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

25.29(2) When medications are administered or stored by the program, the following requirements shall apply:

- a. The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.
- b. The program shall document any medication the program has agreed to administer or store.
- c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.
- d. The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.
- e. No person other than the dispensing pharmacist shall alter a prescription label.
- f. Each tenant's medication shall be stored in its originally received container.

g. When partial or complete control of medication is delegated to the program by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

h. Each program shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—25.30(231C) Nurse review. A program that administers prescription medications or provides health care professional-directed or health-related care shall provide for a registered nurse to:

25.30(1) Monitor, at least every 90 days, or after a change in condition, each tenant receiving program-administered prescription medications for adverse reactions to program-administered medications and make appropriate interventions or referral, and ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

25.30(2) Ensure that health care professionals' orders for tenants receiving health care professional-directed care from the program are current; and

25.30(3) Assess and document the health status of each tenant, make recommendations and referrals as appropriate, and monitor progress on previous recommendations at least every 90 days or if there are changes in health status; and

25.30(4) Provide the program with written documentation of the activities, as set forth in 25.30(1) through 25.30(3), showing the time, date and signature.

321—25.31(231C) Nursing assistant work credit.

25.31(1) A person certified as a nursing assistant who is supervised by a licensed nurse may submit information to DIA to obtain credit toward maintaining certification for working in a program.

25.31(2) A program shall complete and submit to DIA a Nurse Aide Registry Application for each nursing assistant working in the program. A licensed nurse working in the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides/> under the "Resource" tab.

25.31(3) A program shall complete and submit to DIA an Iowa Nurse Aide Registry Quarterly Employment Report whenever a change in employment for a certified nursing assistant occurs. The report may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at <http://www.dia-hfd.state.ia.us/nurseaides/> under the "Resource" tab.

321—25.32(231C) Food service.

25.32(1) The program shall provide or coordinate with other community providers to provide hot or other appropriate meal(s) at least once a day or make arrangement for the availability of meals.

25.32(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

25.32(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 1/3 percent if the program provides one meal per day;
- b. A minimum of 66 2/3 percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

25.32(4) Therapeutic diets are not required but may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by Iowa State Press shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for preparation and service of food for therapeutic diets.

25.32(5) Personnel who are employed by or contracting with the program and who are responsible for preparing or serving food, or both preparing and serving food, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection. At a minimum, one person directly responsible for food preparation shall have successfully completed a state-approved food protection program.

25.32(6) Programs engaged in the preparation and serving of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and serving of food, including the requirements imposed under Iowa Code chapter 137F.

321—25.33(231C) Staffing.

25.33(1) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

25.33(2) A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day in the proximate area, and check on tenants as indicated in the tenants' service plans.

25.33(3) Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

25.33(4) A program serving one or more tenants with cognitive disorder or dementia shall follow a system, a program or written staff procedures in lieu of a personal emergency response system that address how the program will respond to the emergency needs of the tenant(s).

25.33(5) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

25.33(6) Any nursing services shall be available in accordance with Iowa Code chapter 152 and 655—Chapter 6.

25.33(7) The program shall have training and staffing plans on file, and shall maintain documentation of training received by program personnel.

25.33(8) All personnel of a program shall be able to implement the program's accident, fire safety and emergency procedures.

321—25.34(231C) Dementia-specific education for program personnel.

25.34(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of six hours of dementia-specific education and training prior to or within 90 days of employment or the beginning date of the contract.

25.34(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting; and
- k. Staff support and stress reduction.

25.34(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

25.34(4) An employee who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 25.34(1).

321—25.35(231C) Another business or activity in an assisted living program.

25.35(1) A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is provided, if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

25.35(2) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not interfere with the use of the program by tenants, interfere with services provided to tenants, or be disturbing to tenants.

25.35(3) A business or activity conducted in the designated part of the physical structure in which the program is provided shall not reduce space, services or staff available to tenants or necessary to meet the needs of the tenants.

321—25.36(231C) Managed risk statement. The program shall have a managed risk statement which includes the tenant's or, if applicable, the legal representative's signed acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—25.37(231C) Life safety—emergency policies and procedures and structural safety requirements.

25.37(1) The program shall follow written emergency policies and procedures, which include the following elements:

- a. Emergency plan (identify where located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations about smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Evacuation of tenants; and
- j. Procedures for reporting and documentation.

25.37(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

- a. Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of wandering or a tenant exhibits wandering behavior.
- b. Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

25.37(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living facilities in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the facility is in compliance with these requirements is necessary for certification of a program.

25.37(4) The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding, and shall do so for tenants with cognitive impairment or dementia or at a tenant's request.

321—25.38(231C) Transportation. When transportation services are provided directly or under contract with the program:

1. The vehicle shall be accessible and appropriate to the tenants using it, with consideration for any physical disabilities and impairments.

2. Every tenant who is being transported shall have a seat in the vehicle, except those tenants who remain in their wheelchairs.
3. Wheelchairs shall be secured when the vehicle is in motion.
4. Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.
5. During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.
6. The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.
7. Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

321—25.39(231C) Activities.

25.39(1) The program shall provide appropriate programming for each tenant. Programming shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

25.39(2) Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

25.39(3) A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

25.39(4) Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

321—25.40(231C) Structural requirements.**25.40(1) General requirements.**

- a. The structure of the program shall be designed and operated to meet the needs of the tenants.
- b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.
- c. Programs shall have private dwelling units with a single-action lockable entrance door.
- d. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door, and shall do so if the presence of the lock presents a danger to the health and safety of the tenant.
- e. The structure in which a program is housed shall be built at a minimum of Type V (111) construction as given in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 1994 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.
- f. Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances, and shall do so if the presence of cooking appliances presents a danger to the health and safety of the tenant or others.

25.40(2) Programs certified prior to July 4, 2001. Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
- b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.
- c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.
- d. The program shall have a minimum common area of 15 square feet per tenant.

25.40(3) New construction built on or after July 4, 2001. Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
 - b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.
 - c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.
 - d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility water control, and shall do so if the presence of the water control presents a danger to the health and safety of the tenant.
 - e. The program shall have a minimum of 25 square feet of common space per tenant.
- 25.40(4)** *Structure being converted to or rehabilitated for use for a program on or after July 4, 2001.* A program operating in a structure that was converted or rehabilitated for use for a program on or after July 4, 2001, shall meet the following requirements:
- a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
 - b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.
 - c. A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.
 - d. The program shall have a minimum common area of 15 square feet per tenant dedicated for use by the program tenants.
 - e. Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facilities.
 - f. Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.

321—25.41(231C) Dwelling units in dementia-specific programs. Dementia-specific programs are exempt from subrules 25.40(2) to 25.40(4) as follows:

25.41(1) For a program built in a family or neighborhood design:

- a. Each dwelling unit used for single occupancy shall have total square footage of not less than 150 square feet of floor area, excluding a bathroom;
- b. Each dwelling unit used for double occupancy shall have total square footage of not less than 250 square feet of floor area, excluding a bathroom; and
- c. The common areas shall be increased by the equivalent of the waived square footage.

25.41(2) Self-closing doors are not required for individual dwelling units or bathrooms.

25.41(3) Dementia-specific programs may choose not to provide bathing facilities in the living units.

321—25.42(231C) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

321—25.43(231C) Interpretive guidelines. The department shall develop interpretive guidelines as situations arise requiring them.

These rules are intended to implement Iowa Code Supplement chapter 231C.

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CHAPTER 26
MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION
FOR ELDER GROUP HOMES, ADULT DAY SERVICES AND
ASSISTED LIVING PROGRAMS

321—26.1(17A,231B,231C,231D) Monitoring.

26.1(1) The department of inspections and appeals (DIA) shall monitor a certified program at least once during the program's certification period.

26.1(2) All records and areas of the program deemed necessary to determine compliance with the requirements for certification under 321—Chapters 24, 25 and 29 shall be accessible to DIA for purposes of monitoring.

321—26.2(17A,231B,231C,231D) Complaint procedure.

26.2(1) The process for filing a complaint is as follows:

a. Any person with concerns regarding the operations and service delivery of a program may file a complaint with the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083, or by use of the complaint hotline, telephone 1-877-686-0027. The Web site address is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

b. When the nature of the complaint is outside of DIA authority, DIA shall forward the complaint, or refer the complainant, to the appropriate investigatory entity.

c. Complaints related to elder group homes and assisted living programs may also be filed in the office of the long-term care resident's advocate as set forth in Iowa Code Supplement section 231.42.

26.2(2) The complaint shall include the complainant's name, address and telephone number; the complainant's relationship to the program, tenant or participant; and the reason for the complaint. DIA shall act on anonymous complaints unless DIA determines that the complaint is intended to harass the program. If DIA, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, DIA may dismiss the complaint.

26.2(3) Upon receipt of a complaint made in accordance with this rule, DIA shall make a preliminary review of the complaint to determine if a potential violation of 321—Chapter 24 for adult day services programs or 321—Chapter 25 for assisted living programs, or 321—Chapter 29 for elder group homes, as applicable, exists. If a potential violation exists, DIA shall make or cause to be made an on-site investigation of the program within 20 working days unless there is the possibility of immediate danger, in which case the investigation for elder group homes shall be completed within 24 hours of the receipt of the complaint and investigations for adult day services or assisted living programs shall be completed within 48 hours.

26.2(4) For any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, DIA shall:

a. Promptly investigate the allegation.

b. Take certification enforcement action, as appropriate, in accordance with this chapter.

c. Notify the accrediting entity by the most expeditious means possible of any actions taken by DIA with respect to certification enforcement.

26.2(5) DIA shall apply a preponderance-of-evidence standard in determining whether or not a complaint is substantiated.

26.2(6) DIA shall notify the department, the program, and, if known, the complainant, of the results of the complaint investigation as follows:

a. If regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings to the program by certified mail within 20 working days. The program shall be required to submit a plan of correction to DIA within 10 working days following receipt of the report. DIA shall determine the program's compliance with applicable requirements contained in Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, 25 or 29, whichever is applicable,

within 10 working days of receiving an acceptable plan of correction and shall determine whether any enforcement action related to continued certification is necessary.

b. If no regulatory insufficiencies are identified as a result of the complaint investigation, DIA shall issue a report of the findings within 15 days following the on-site investigation.

321—26.3(17A,231B,231C,231D) Enforcement action. DIA may take the following actions as a result of noncompliance with Iowa Code Supplement chapters 231B, 231C and 231D and rules promulgated by the Iowa department of elder affairs.

26.3(1) In lieu of denial, suspension or revocation, DIA may issue a conditional certification for a period of up to one year. In the issuance of a conditional certification, DIA shall specify the issues of noncompliance and the period of time required to comply with each issue. At any time up to 10 working days following the required compliance period, the program shall provide written notification to DIA of the program's compliance with requirements. Following receipt of the program notification, DIA shall make a final certification decision and may conduct an on-site monitoring evaluation to verify compliance prior to making the final decision. Failure by the program to submit timely notification of compliance to DIA shall result in suspension or revocation of the conditional certification and may result in further enforcement action as available under Iowa Code Supplement chapter 231B, 231C or 231D and 321—Chapter 24, 25 or 29, whichever is applicable. DIA shall notify the program of a final certification decision within 15 working days following receipt of the program notification or on-site monitoring evaluation, whichever is later, or following the program's failure to timely notify DIA of compliance.

26.3(2) Civil penalty for adult day services and assisted living programs. If a program continues to fail or refuses to comply, DIA may assess a civil penalty, which shall be paid to DIA within ten working days following assessment, as follows:

a. A program in noncompliance with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, that results in imminent danger or a substantial probability of resultant death or physical harm to a participant or tenant, up to but not to exceed \$10,000.

b. Following receipt of notice from DIA, a program which fails or refuses to comply with Iowa Code Supplement chapter 231C or 231D and 321—Chapter 24 or 321—Chapter 25, whichever is applicable, within prescribed time frames set out by DIA when such noncompliance has a direct relationship to the health, safety, or security of program participants or tenants, up to but not to exceed \$5,000.

321—26.4(17A,231B,231C,231D) Notice—hearings.

26.4(1) The denial, suspension, or revocation of a certificate shall be effected by delivering to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service, a notice setting forth the particular reasons for such action. Such denial, suspension, or revocation shall become effective 30 days after the mailing or service of the notice, unless the applicant or certificate holder, within such 30-day period, gives written notice to DIA requesting a hearing, in which case the notice shall be deemed to be suspended.

26.4(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

26.4(3) At any time at or prior to the hearing, DIA may rescind the notice of the denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

321—26.5(17A,231C,231D) Appeals. All appeals authorized under Iowa Code Supplement section 231C.11 or 231D.6 shall be conducted pursuant to 481—Chapter 10.

321—26.6(17A,231B,231C,231D) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—26.7(17A,21,231B,231C,231D) Public disclosure of findings. The program shall post a notice in a prominent public location in the facility stating that copies of the final report resulting from a monitoring evaluation or a complaint investigation are available upon request. Copies shall be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083, telephone (515)281-6325.

321—26.8(17A,231C,231D) Discrimination or retaliation. A tenant of an assisted living program or a participant of an adult day services program, a legal representative or family member of a tenant or participant, if applicable, or an employee of the program may file a complaint with DIA if any person has been the subject of discrimination or retaliation as prohibited by Iowa Code Supplement section 231C.13 or 231D.12. DIA shall follow the complaint procedures outlined in 26.2(17A,231B,231C,231D). A program found in violation of Iowa Code Supplement section 231C.13 or 231D.12 shall be assessed a civil penalty of \$1,000, which shall be paid to DIA within ten working days following assessment.

321—26.9(17A,231C,231D) Emergency removal of adult day services participants or assisted living tenants. If DIA determines that the health or safety of participants in an adult day services program or tenants in an assisted living program is in immediate danger and the tenants or participants need to be removed from the program, DIA shall use the following procedures to ensure a safe and orderly transfer.

26.9(1) DIA shall notify the local area agency on aging; the departments of elder affairs, human services, public health, and transportation; law enforcement agencies; and the tenant advocate, as necessary and appropriate, for the following:

- a. To alert them to the need to transfer participants or tenants from a program;
- b. To request assistance in identifying alternative programs or other appropriate settings; and
- c. To contact the participants or tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

26.9(2) DIA shall notify the program on site of the immediate need to transfer participants or tenants and of assistance available, in coordination with the appropriate parties under 26.9(1).

26.9(3) DIA shall proceed with the transfer of participants or tenants.

26.9(4) DIA may suspend a program's certification prior to a hearing.

321—26.10(231C,231D) Notification of casualties. DIA shall be notified by telephone within 24 hours of casualties in adult day services and assisted living programs, and may request a written report following notification, in the following situations:

26.10(1) Any accident or incident causing substantial injury to or death of a participant or tenant.

26.10(2) When damage to the program as a result of fire, natural or other disaster impairs the program's ability to function.

These rules are intended to implement Iowa Code chapters 17A and 21 and Iowa Code Supplement chapters 231B, 231C and 231D.

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CHAPTER 27
FEES FOR ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS

321—27.1(231D) Adult day services program fees.

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Blueprint review is \$900.
4. Optional preliminary plan review is \$500.

321—27.2(231C) Assisted living program fees.

1. Two-year initial certification of a nonaccredited program is \$750.
2. Two-year recertification of a nonaccredited program is \$1,000.
3. Administrative fee for an accredited program is \$125.
4. Blueprint review is \$900.
5. Optional preliminary plan review is \$500.

These rules are intended to implement Iowa Code Supplement chapters 231C and 231D.

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CHAPTER 28
IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED
SERVICES FOR SENIORS

321—28.1(231,249H) Purpose. The purpose of the Iowa senior living program, home- and community-based services for seniors, is to create a balanced, comprehensive and affordable long-term care system that is consumer-directed, provides a balance between institutional and noninstitutional services and contributes to the quality of the lives of Iowans.

321—28.2(231,249H) Use of funds. Funds appropriated from the senior living trust fund for home-and community-based services for seniors shall be used for activities related to the design, maintenance, or expansion of home- and community-based services for low- and moderate-income seniors including, but not limited to, adult day, personal care, respite, homemaker, chore, and transportation services which promote the independence of seniors and delay the use of institutional care by seniors with low and moderate incomes.

321—28.3(231,249H) Definitions. Words and phrases as used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

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

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

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

“Direct service” means a service to a client that is administered by the area agency on aging and provided by employees of the area agency on aging.

“Grant” means the use of funds to underwrite an operation to support the existence of a specific service provider.

“Income” means wages, salaries, business income, social security benefits, veteran’s administration benefits, disability payments, retirement or pension plan income, annuity income, interest income, supplemental security income, welfare payments, and other cash income.

“Long-term care services” means those services specified under the medical assistance home- and community-based services waiver for the elderly or the National Aging Program Information System (NAPIS), which are designed to directly promote the independence of seniors and to delay the use of institutional care by seniors with low and moderate incomes.

“Low income” means:

1. For purposes of determining client eligibility for financial assistance under Iowa Code section 249H.7, household income of less than 300 percent of SSI;
2. For purposes of funding distribution under Iowa Code chapter 249H, household income at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

“Medical assistance program” means the financial assistance programs established in cooperation between the state of Iowa and the Centers for Medicare and Medicaid Services (CMS) under the Medicaid state plan for lower-income Iowans with health and social needs.

“Moderate income” means income that is equal to or greater than 300 percent of SSI and less than 300 percent of the federal poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

“Provider” means an individual(s), agency(ies), public and private for-profit and not-for-profit organization(s) or other entity(ies) delivering long-term care services funded under these rules.

“Senior” or *“elder”* means an individual who is 60 years of age or older.

“*Senior living program*” means the senior living program created in Iowa Code chapter 249H to provide for long-term care alternative services.

“*Senior living trust fund(s)*” or “*SLTF*” means the funding mechanism established in Iowa Code chapter 249H.

“*Subcontractor of the area agencies on aging*” means a provider receiving funds by contract with an area agency on aging.

“*Supplemental security income (SSI)*” means the income level defined each year by the Social Security Administration (SSA) for the nationwide federal assistance program administered by SSA, which guarantees the defined minimum level of income for needy aged, blind, or disabled individuals by providing basic cash support.

“*Underserved*” means:

1. For service funding purposes, individuals aged 60 and over who are unable to access needed services; or
2. Areas where the service identified as needed is not available because there is no provider for that service; or
3. Existing providers of that service are regularly unable to deliver the amount of service needed.

“*Voucher*” means the mechanism used to purchase a specific service from a vendor on behalf of an individual client or clients.

321—28.4(231,249H) Disbursement of funds.

28.4(1) Administration. The department may use up to 7 percent of the service dollars appropriated to the department from the SLTF for purposes of implementing and administering the functions delegated to the department by Iowa Code chapter 249H.

28.4(2) Identification of service needs.

- a. The department, in collaboration with the area agencies on aging, shall conduct, on a four-year cycle, a statewide needs assessment designed to identify individuals aged 60 and over as underserved.
- b. In addition to the funds given in 28.4(1), the department may withhold up to \$100,000 for each four-year cycle from the service dollars appropriated to the department from the SLTF to conduct a statewide needs assessment.
- c. The department shall seek partners and other funding sources to share the cost of implementing the survey.

28.4(3) Process for disbursement of funds to AAA. The process for disbursement of funds to AAA shall be incorporated into the area plan process outlined in the OAA.

321—28.5(231,249H) Eligible use of funds.

28.5(1) AAA may use up to 7 percent of the service dollars for purposes of developing, implementing and administering local long-term care services and for collecting and reporting required data.

28.5(2) The funds distributed to the AAA by the department from the senior living trust fund shall be used to:

- a. Provide services to low- and moderate-income Iowans aged 60 and over;
- b. Provide long-term care services to enhance the ability of seniors to appropriately avoid or delay institutionalization;
- c. Provide services through:
 - (1) Enhancement and expansion of existing providers to serve new seniors;
 - (2) Provision of new units of service to existing seniors and new areas;
 - (3) Identification and development of new providers; and
 - (4) Addition of new funding sources to maintain current service levels when service levels would otherwise decline due to loss of purchasing power.

321—28.6(231,249H) Client participation. The AAA may use client participation for services funded under Iowa Code chapter 249H. When client participation is used:

28.6(1) Eligibility shall be based on self-declaration by the client or declaration on the client's behalf by the client's legal representative. If the provider or AAA has reason to believe that the declaration is inaccurate or misrepresents the client's financial status, the provider or AAA may require documentation of income and resources and subsequently may discontinue further financial assistance from the senior living trust fund if the individual is found ineligible.

28.6(2) Funds generated through client participation must be used by the AAA or contracted service provider to purchase the respective service for which the funds were received.

28.6(3) An AAA may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the AAA does not utilize Older Americans Act funding for the same service category.

28.6(4) An AAA subcontractor may use client participation for services funded under Iowa Code section 249H.7 for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

321—28.7(231,249H) Reallocation of unobligated funds.

28.7(1) If the department determines prior to the end of the fiscal year that an AAA will have unused funds, the department may reallocate the unused funds to one or more AAA in accordance with demonstrated utilization or by a reallocation method specified by IAPI. The AAA receiving these funds shall obligate them by the end of the fiscal year in which they are reallocated.

28.7(2) Any unobligated funds remaining at the end of the state fiscal year shall be returned to the department and deposited in the Iowa senior living trust fund.

321—28.8(231,249H) Prohibited use of senior living trust fund moneys. SLTF moneys shall not be used to:

1. Purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

2. Replace existing funding for a long-term care service.

The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for seniors and results in an increase in total AAA funding for long-term care services to seniors equal to the SLTF dollars used for replacement.

321—28.9(231,249H) Disbursement of SLTF funds to AAA subcontractors.

28.9(1) *Use of SLTF funding by subcontractors.*

- a.* Funds contracted by an AAA from the SLTF shall be used to provide long-term care services to enhance the ability of Iowans aged 60 and over with low or moderate income to appropriately avoid or delay institutionalization.

- b.* The AAA subcontractor shall not use senior living trust funds to replace existing funding for a long-term care service. The AAA may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the subcontractor to another long-term care service for the elderly and results in an increase in total funding for long-term care services by the subcontractor to seniors that is equal to the senior living trust fund dollars used for replacement.

28.9(2) *Prioritization of service contracts.* The AAA may prioritize service contracts and funding levels by applying criteria that include, but are not limited to, the following:

- a.* Local priorities in order to fulfill unmet needs.

- b.* The provider's commitment to obtain or provide matching funds.

- c.* Provider commitment to use client participation.

- d.* Cost.

- e.* The provider's history of providing quality service.

28.9(3) Criteria to receive funds as a subcontractor of an AAA.

a. The applicant for senior living trust funds must demonstrate that the proposed long-term care alternative service(s):

- (1) Will be responsive to the service priorities identified by the AAA; or
- (2) Will address other significant unmet service needs of eligible seniors as documented by the applicant.

b. The applicant must document the ability to provide the proposed services and the related administration, financial tracking and reporting required by a subcontractor under these rules.

c. The subcontractor must agree to meet the criteria set out in this subrule in addition to criteria established by the AAA in its request for proposal and contract.

d. The subcontractor shall ensure that all employees providing in-home care to clients have had a dependent adult abuse and criminal history background check and have been cleared for said functions in accordance with Iowa Code section 135C.33.

e. Senior living trust funds shall not be contracted to a provider that has been prohibited from participating in the Medicare or medical assistance programs.

f. The subcontractor shall commit to seeking third-party reimbursement when available.

28.9(4) Disbursements of funds to AAA subcontractors.

a. Method. AAA may use the method or methods of disbursing funds determined to best ensure effective provision of services that will address documented unmet needs, including contracts, grants, vouchers and direct services.

(1) Provider applications shall be due at the respective AAA office by the date given in the request for proposal for review and possible approval by the AAA.

(2) Funds shall be disbursed by the AAA following the receipt of funds from the department.

b. SLTF service dollars appropriated under Iowa Code section 249H.7 shall be disbursed to subcontractors through the area plan process as described in 321 IAC 5.

321—28.10(231,249H) Reporting requirements.**28.10(1) AAA subcontractors.**

a. Area agency on aging subcontractors shall submit monthly reports to the area agency on aging based upon reporting forms that are available from the AAA.

b. Subcontractor monthly reports, excepting those submitted by legal services providers, shall provide data for the previous month and by year-to-date for:

- (1) Total number of clients served; and
- (2) For each client receiving financial assistance from senior living trust funds, the report must be by service category, the number of units of service provided, the number of units of service not provided, the reasons services were not provided, and expenditures.

c. Subcontractors shall provide other information as requested by the AAA.

d. Subcontractors, excepting legal services providers, shall participate in the NAPIS client registration process.

e. Subcontractors providing legal services shall report in aggregate:

- (1) Unduplicated count of clients served;
- (2) The number of units of service provided;
- (3) The number of units of service not provided;
- (4) The reasons services were not provided; and
- (5) Expenditures.

28.10(2) Area agencies on aging.

a. Area agencies on aging shall, at a minimum, submit monthly reports to the department, as specified by the department in one or more IAPIs governing reporting requirements.

b. Each AAA shall use the NAPIS client registration process for clients receiving HCBS senior living assistance, with the exception of clients receiving legal assistance.

321—28.11(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

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

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CHAPTER 29
ELDER GROUP HOMES
[Prior to 4/14/04, see 321—Ch 26]

321—29.1(231B) Definitions.

“Assessment” means the administration of a standardized tool, recognized by the department and administered by a health care professional, to determine appropriate admission qualifications and develop a service plan.

“Assistance” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall not be construed to mean the tenant has not participated in the task or activity.

“Committee” means a resident advocate committee established by 321—Chapter 9.

“Condition” means a provision attached to a new or existing certification that limits or restricts the scope of the certification or imposes additional requirements on the certificate holder.

“Convenience services” means hotel-type services and may include meals, transportation, laundry and housekeeping provided for the convenience of a tenant.

“Department” means the department of elder affairs or the department’s designee.

“DIA” means the department of inspections and appeals.

“EGH” means an elder group home.

“Elder” means a person 60 years of age or older.

“Elder group home” means a single-family residence that is operated by a person who is providing room, board, and personal care to three to five elders who are not related to the person providing the service within the third degree of consanguinity or affinity.

“Health care professional” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed through the department of public health.

“Homelike” means an environment that promotes the dignity, security and comfort of tenants through the provision of personalized care and services to encourage independence, choice and decision making by the tenants.

“Household occupant” means a homeowner, a member of the homeowner’s family, a tenant, an operator, a member of the operator’s family, an on-site manager or a member of the on-site manager’s family.

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

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

“Occupancy agreement” means a written contract entered into between an EGH and a tenant that clearly describes the rights and responsibilities of the EGH and the tenant and other information required by rule or statute. The occupancy agreement may include a separate signed lease and signed service agreement.

“On-site manager” means the person on duty responsible for direct supervision or provision of tenant care. The “on-site manager” may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

“Operator” means the person who takes responsibility for all care and ensures that appropriate staffing is provided to tenants on a 24 hours per day, seven days per week basis.

“Part-time or intermittent health-related care” means licensed nursing services and professional therapies, in combination with nurse-delegated assistance, which are provided to a participant not to exceed a total of three hours per day.

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

“*Personal care*” means services that may include bathing, personal hygiene, dressing, grooming, and supervision of self-administered medications. However, “personal care” does not include the administration of medications or the services of a registered nurse or licensed practical nurse.

“*Personal care provider*” means an individual who, in return for remuneration, assists with the essential activities of daily living which the recipient can perform personally only with difficulty.

“*Program*” shall have one of the following meanings, determined by the context of the particular rule under consideration:

1. A person. Unless otherwise provided by law, “person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

2. A physical facility, structure or building utilized as an elder group home.

3. Services provided to persons eligible for an elder group home as defined in this chapter.

“*Qualified professional*” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling or electrical contractor who furnishes regular service to such equipment.

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

“*Self-administration*” means a tenant’s taking personal responsibility for all medication needs, including ordering, refilling, remembering dosing schedule, and self-administering medications.

“*Service plan*” means the written description of a tenant’s needs and capabilities, including by whom, when and how often care and services will be provided.

“*Supervision of self-administered medications*” means the verbal reminder or guidance in the identification of the medication and the times and manner of administration. “Supervision of self-administered medications” includes activities such as routine prompting or reminding, opening of containers or packaging at the direction of the tenant, and reading instructions or other label information in order for a tenant to self-administer a medication. “Supervision of self-administered medications” does not include the placing of the medication internally or externally on the tenant’s body. Supervision of self-administration shall comply with rule 321—29.9(231B).

“*Tenant*” means any person who is receiving room, board, personal care or convenience services for payment of fees in an EGH on a 24 hours per day, seven days per week basis.

“*Usable floor space*” means open floor space that is not under fixtures, furniture or other barriers and is available for walking or using a wheelchair.

“*Waiver*” means action taken by DIA which suspends in whole or in part the requirements or provisions of a rule as applied to an identified tenant on the basis of that tenant’s particular circumstances.

321—29.2(231B) Application content. Any entity that meets the definition of an EGH as defined in Iowa Code Supplement section 231B.1(4) must be certified by DIA. An eligible applicant is any for-profit or nonprofit corporation or person that owns a single-family residence.

29.2(1) Application materials may be obtained by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325. The Web site is https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

29.2(2) The initial or renewal application for certification shall contain:

a. A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the owner, operator or designated manager, as well as stockholders, partners or any individuals who have greater than a 10 percent equity interest in the program. The EGH operator shall notify DIA of any changes in the list within ten working days of the change;

b. A statement affirming that the individuals listed in 29.2(2)“*a*” have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult or child abuse code in any state;

- c.* A statement disclosing whether any of the individuals listed in 29.2(2) “a” have or have had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect;
- d.* A copy of the current policy and procedure for evaluation of each tenant, which includes a copy of the evaluation tool to be used to identify the functional, cognitive and health status of each tenant;
- e.* Identification of target population;
- f.* A copy of the current EGH service plan format;
- g.* If the EGH contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity’s current license or certification;
- h.* The current policy and procedure for addressing medication needs of tenants;
- i.* The current policy and procedure describing accident and emergency response;
- j.* A copy of the current tenant occupancy agreement;
- k.* The current policy and procedure for mutual managed risk agreements and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

321—29.3(231B) Initial certification process.

29.3(1) The applicant shall submit one copy of the completed application and associated documentation to DIA at the address stated in 29.2(1) at least 60 calendar days prior to the expected date of beginning operations. An application for an EGH that intends to operate in new construction shall include proof of compliance with all applicable local housing and state building codes.

29.3(2) The applicant shall notify the state fire marshal of the applicant’s intent to become certified as an EGH at least 60 calendar days prior to the expected date of beginning operations.

29.3(3) DIA shall review the application for completeness and compliance with this chapter. A completed application shall include all necessary documentation including state fire marshal approval.

29.3(4) DIA shall notify the applicant within 20 working days of approval or denial, upon receipt of a completed application.

29.3(5) Certification for an EGH, unless suspended or revoked, shall expire at the end of the time period specified in the certificate.

321—29.4(231B) Renewal of certification. Certification may be renewed upon application by the owner or operator in accordance with this rule. In order to renew the EGH certification, the applicant must submit:

1. A completed application that includes all information required by 29.2(2) at least 90 days prior to the expiration of the certification;
2. Documentation by a qualified professional that the following systems have been inspected and found to be maintained in conformance with the manufacturer’s recommendations and nationally recognized standards: heating, cooling, water heater, electricity, plumbing, wastewater, artificial light, and ventilation; and, if applicable, garbage disposal, cooking area, laundry and elevators;
3. Documentation that all employees have received the two-hour mandatory reporter training on dependent adult abuse as well as documentation that the EGH has established a policy for reporting abuse allegations and a policy for employee sanctions if allegations are substantiated; and
4. Documentation to reflect any structural or operational changes in the EGH from the information submitted since the last application.

321—29.5(231B) Denial, suspension, or revocation of certification.

29.5(1) DIA shall have the authority to deny, suspend or revoke certification in any case in which DIA finds there has been a substantial or repeated failure on the part of the EGH to comply with the requirements of Iowa Code Supplement chapter 231B and this chapter or for any of the following reasons:

- a.* Cruelty or indifference to EGH tenants.
- b.* Appropriation or conversion of the property of an EGH tenant without the tenant's or the tenant's legal representative's written consent.
- c.* Permitting, aiding or abetting any illegal act set forth in Iowa Code Supplement chapter 231B or this chapter.
- d.* Obtaining or attempting to obtain or retain certification by fraudulent means or misrepresentation or by submitting false information.
- e.* Habitual intoxication or addiction to controlled substances by the owner, operator, on-site manager or other staff of the EGH.
- f.* Securing the devise or bequest of property owned by a tenant by threats, coercion or undue influence.
- g.* The documentation or presence of any individual, on staff or otherwise, who has or has had an ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.5(2) When an applicant for certification, an owner or an operator is an entity other than an individual, DIA may deny, suspend, or revoke certification if any person in a position of control or an officer of the entity engages in any act or omission prohibited by Iowa Code Supplement chapter 231B or this chapter.

321—29.6(231B) Notice, hearing, appeal and judicial review.

29.6(1) Notice of denial, suspension, or revocation of a certificate shall be effected by delivery to the applicant or certificate holder by certified mail, return receipt requested, or by personal service setting forth the particular reasons for the action. The denial, suspension, or revocation shall become effective 30 days after the receipt or service of the notice. The applicant or certificate holder may, within the 30-day period, give written notice to DIA requesting a hearing. Any DIA action on the notice shall be suspended until the hearing and all appeals are concluded.

29.6(2) The hearing shall be conducted by the administrative hearings division of DIA pursuant to 481—Chapter 10.

29.6(3) At any time at or prior to the hearing, DIA may rescind the notice of denial, suspension, or revocation upon receipt of satisfactory evidence that the reasons for the denial, suspension, or revocation have been or will be removed.

29.6(4) All appeals shall be conducted pursuant to 481—Chapter 10.

29.6(5) Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

321—29.7(231B) Tenant admission requirements.

29.7(1) The operator or on-site manager may only admit or continue to care for tenants whose service needs include personal care as defined in this chapter.

29.7(2) Criteria for exclusion of tenants. An EGH shall not knowingly admit or retain a tenant who:

- a.* Is bed-bound; or
- b.* Requires routine one-person assistance with standing, transfer or evacuation; or
- c.* Is dangerous to self, other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically wanders into danger, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or

- d.* Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e.* Is under the age of 18; or
- f.* Requires more than part-time or intermittent health-related care; or
- g.* On a routine basis, has unmanageable incontinence.

29.7(3) A tenant may be accepted for residence only if a bedroom and a bathroom are available to the tenant from which the unaided tenant immediately and without aid of another is physically and mentally capable of traveling a normal path to safety, including the ascent and descent of stairs.

321—29.8(231B) Service plan required.

29.8(1) At the time of admission, the tenant's service plan shall be developed from an assessment of the tenant's functional abilities in cooperation with the tenant or the tenant's legal representative.

29.8(2) The service plan shall be individualized and shall, at a minimum:

- a.* Indicate the tenant's identified needs and tenant's requests for assistance with expected outcomes;
- b.* Indicate any services and care to be provided pursuant to the agreement with the tenant;
- c.* Identify the provider(s) if other than the EGH; and
- d.* Be updated within 30 days of admission, as needed and, at a minimum, annually.

29.8(3) The tenant's service plan shall be reviewed for appropriateness as follows:

- a.* Based on an assessment of the tenant's needs; or
- b.* At the request of the tenant, the tenant's legal representative, the operator or the on-site manager.

321—29.9(231B) Medications. When medications are administered or stored by the EGH, the following requirements shall apply:

29.9(1) The administration of medications shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the agent delegated in accordance with 655—subrules 6.2(5) and 6.3(1) and Iowa Code chapter 155A.

29.9(2) The EGH shall document any medication the EGH has agreed to administer or store.

29.9(3) Medication, other than that self-administered by a tenant, shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

29.9(4) The medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

29.9(5) No person other than the dispensing pharmacist shall alter a prescription label.

29.9(6) Each tenant's medication shall be stored in its originally received container.

29.9(7) When partial or complete control of medication is delegated to the EGH by the tenant, appropriate staff may transfer medications from the original prescription containers into medication reminder boxes or medication cups in the tenant's presence.

29.9(8) Each EGH shall follow written policies and procedures for narcotic medications in accordance with Iowa Code chapter 155A.

321—29.10(231B) Occupancy agreement.

29.10(1) Prior to the tenant's taking occupancy, the tenant or tenant's legal representative, if applicable, and the EGH shall enter into and sign an occupancy agreement that clearly describes the rights and responsibilities of the tenant and of the EGH, and shall sign a managed risk policy disclosure statement.

29.10(2) The occupancy agreement shall be in 12-point type or larger, and be written in language using plain, commonly understood terms and, to the extent possible, be easy to understand by the tenant or the tenant's legal representative.

29.10(3) The written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a.* A description of all fees, charges, and rates describing the tenant's accommodations and basic services covered, as well as any additional and optional services with their related costs.

- b.* A statement regarding the impact of the fee structure on third-party payments and whether third-party payments and resources are accepted by the EGH.
 - c.* The procedure followed for nonpayment of fees.
 - d.* Identification of the party responsible for payment of fees and identification of the tenant's legal representative, if any.
 - e.* The term of the occupancy agreement.
 - f.* A statement that the EGH must notify the tenant or the tenant's legal representative, as applicable, in writing at least 30 days prior to any change in the occupancy agreement, with the following exceptions. In these instances the notification shall be immediate:
 - (1) When the tenant's health status or behavior constitutes a substantial threat to the health or safety of the tenant, other tenants, or others, including when the tenant refuses to consent to relocation.
 - (2) When an emergency or a significant change in the tenant's condition results in the need for the provision of services that exceed the type or level of services included in the occupancy agreement and the necessary services cannot be safely provided by the EGH.
 - g.* A statement that all tenant information shall be maintained in a confidential manner to the extent required under state and federal law.
 - h.* Occupancy, involuntary transfer, and transfer criteria and procedures, which ensure a safe and orderly transfer from the EGH. The internal appeals process provided relative to an involuntary transfer.
 - i.* The EGH policies and procedures for addressing grievances between the EGH and the tenant, including grievances relating to transfer and occupancy.
 - j.* A policy regarding discrimination or retaliation against a tenant, tenant's family, or an employee of the EGH who has initiated or participated in any proceeding authorized by this chapter.
 - k.* The emergency response policy.
 - l.* The staffing policy which specifies that staff is available 24 hours per day, if nurse delegation will be used, and how staffing will be adapted to meet changing tenant needs.
 - m.* The refund policy.
 - n.* A statement regarding billing and payment procedures.
 - o.* The telephone number for filing a complaint with DIA.
 - p.* The telephone number for the office of the state long-term care resident advocate/ombudsman.
 - q.* The telephone number for the elder abuse hotline.
 - r.* A copy of the EGH statement on tenant rights.
 - s.* A statement that the tenant landlord law applies to the EGH.
- 29.10(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the EGH.

29.10(5) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in the services offered and in financial arrangements.

29.10(6) A blank copy of the most current occupancy agreement form shall be made available to the general public upon request. The EGH basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

321—29.11(231B) Waiver of the level of care requirements.

29.11(1) Criteria for level of care waiver.

a. When it becomes apparent to the EGH staff that a tenant will need licensed nursing activities or hospice care and the tenant or tenant's legal representative does not want or approve of a transfer from the EGH, a request for waiver of level of care shall be submitted to DIA by the tenant, tenant's legal representative, homeowner, operator or on-site manager.

b. DIA may grant a waiver if an investigation establishes by clear and convincing evidence that the following criteria have been met:

- (1) It is the informed choice of the tenant or tenant's legal representative to remain in the home; and
- (2) The operator is able to provide appropriate care to the tenant in addition to adequate care of the other tenants, or that additional staff is available or can be obtained to meet the tenant's care needs; and

(3) The waiver shall not jeopardize the care, health, safety or welfare of the tenant or others; and

(4) The tenant does not meet the criteria for exclusion set forth in 29.7(2).

29.11(2) Level of care waivers. Requests for waiver of the level of care requirements for a tenant of an EGH shall be submitted on a form and in a manner designated by DIA and in accordance with this rule. DIA may grant a waiver for an individual tenant on a time-limited basis.

29.11(3) DIA shall:

a. Review and respond in writing to waiver requests within two working days of receipt of necessary documentation.

b. Monitor regularly, for the duration of the waiver, the tenant's medical and functional information for continued appropriateness of the waiver.

29.11(4) The waiver applicant shall notify DIA within five calendar days of any changes in the condition of the tenant as provided in the approved waiver request.

29.11(5) A tenant who is subject to an involuntary transfer shall have the right to an internal appeal of the transfer before the transfer occurs.

321—29.12(231B) Resident advocate committees. Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

29.12(1) *Committee placement.* A resident advocate committee shall be established by the department for each EGH certified in accordance with this chapter.

29.12(2) *Committee visitations.* The committee shall visit the EGH assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.

321—29.13(231B) Requirements for and qualifications of staff.

29.13(1) The EGH shall be staffed by an on-site manager 24 hours per day, seven days per week.

29.13(2) Sufficient trained staff shall be available at all times to fully meet tenants' identified needs.

29.13(3) All personnel of the EGH shall be able to implement the EGH accident, fire safety and emergency procedures.

29.13(4) Personal care providers shall have completed, at a minimum, a home care aide training program that meets the requirements and criteria established in 641—Chapter 80.

29.13(5) The operator shall maintain proof of training of EGH staff for review as required by these rules.

29.13(6) All staff shall sign a statement disclosing whether the staff member has or has had ownership interest in a program certified under Iowa Code Supplement chapter 231 or an EGH, a home health agency, or a licensed health care facility as defined under Iowa Code section 135C.1, or licensed hospital as defined under Iowa Code section 135B.1, which has been closed in any state due to removal of program, agency, or facility licensure or certification or involuntary termination from participation in either the Medicaid or Medicare program; or has been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

29.13(7) The EGH shall conduct, on each employee hired after July 1, 1998, a criminal background check including a dependent adult and child abuse record check in accordance with Iowa Code section 135C.33.

29.13(8) Any person refusing to sign the statement required in 29.13(6) or subsequently found to have provided false information on said statement shall not serve on staff.

321—29.14(231B) Tenant documents.

29.14(1) A file shall be maintained for each tenant at the EGH and shall contain:

a. An occupancy record including the tenant's name; birth date; identification numbers; date of occupancy; names, addresses and telephone numbers of health care professional(s) and tenant's legal representative; tenant's diagnosis (if applicable); and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

b. Application forms;

- c. Initial assessment and all updates;
- d. Nutritional assessment as necessary;
- e. Initial individual service plan and updates;
- f. Signed authorizations for permission to release medical information, photos, or other media information as necessary;
- g. Signed authorization for the tenant to receive emergency medical care if necessary;
- h. When appropriate, medical information sheet, documentation of health care professionals' orders, treatment, therapy, medication and service notes;
- i. Advance health care directives as applicable;
- j. A complete copy of the tenant's occupancy agreement, including any updates;
- k. Written acknowledgement that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- l. A copy of the tenant's power of attorney, guardianship, conservatorship letters of appointment or other documentation of a legal representative as necessary.

29.14(2) The EGH records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant before the records are destroyed.

29.14(3) All records shall be protected from loss, damage and unauthorized use.

321—29.15(231B) EGH facility standards.

29.15(1) The EGH shall be safe; sanitary; well-ventilated; properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

29.15(2) If the structure exists and is being used as an EGH on November 3, 2004, and is unchanged until on or after July 1, 2005, the EGH shall meet the following standards:

a. General.

- (1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.
- (2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.
- (3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.
- (4) The yard, fire exits and exterior steps shall be kept free of obstructions, and shall be accessible and appropriate to the condition of the tenants.
- (5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment is to be accommodated. Common living space remodeled after July 1, 2005, must meet the square footage requirement in 29.15(3).
- (6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.
- (7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.
- (8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.
- (9) A telephone shall be available and accessible for tenants' use and located in a reasonable accommodation for privacy for all calls.

b. Safety.

(1) All combustion appliances shall be used and maintained properly, and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

- (2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

c. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the homeowner or the person currently in charge of the EGH must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four EGH household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each toilet. At least one tub or shower is required for each six household occupants. Programs remodeled after July 1, 2005, must meet the requirements in 29.15(3)“b” and “c.”

d. Bedroom requirements.

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

2. Be adequately ventilated, heated, cooled and lighted;

3. Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright. Bedrooms remodeled after July 1, 2005, must meet the square footage requirement in 29.15(3);

4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to by the tenant, or the tenant’s legal representative, in the occupancy agreement;

5. Be on ground level for tenants with impaired mobility;

6. Be in close enough proximity to the on-site manager to ensure that tenants can alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.

(2) Owners, operators, on-site managers, their family members, convenience service providers and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for EGH storage areas.

29.15(3) Programs constructed after July 1, 2005.

a. The square footage requirements for living areas and tenant bedrooms in an EGH shall be as follows:

(1) Common living area, 300 square feet of usable floor space.

(2) Tenant bedroom, 100 square feet of usable floor space.

b. One toilet and one sink are required for every two EGH household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants. A sink shall be located near each toilet.

c. At least one tub or one shower is required for each four household occupants.

321—29.16(231B) Records. DIA collects and stores a variety of records in the course of certifying and monitoring EGHs. Some stored information may be personally identifiable. Each EGH record maintained by DIA contains both open and confidential information. The confidential information shall not be retrievable by personal identifier unless an EGH uses an individual’s name in the business title.

321—29.17(231B) Classes of information.

29.17(1) Open information includes the following:

- a.* Certification application and status;
- b.* Final findings of state monitoring evaluations;
- c.* Records of complaints;
- d.* Reports from the state fire marshal;
- e.* Plans of correction submitted by an EGH;
- f.* Official notices of certification sanctions; and
- g.* Findings of fact, conclusions of law, decisions and orders issued pursuant to rules

321—29.5(231B) and 321—29.6(231B).

29.17(2) Confidential information includes the following:

- a.* Information which does not comprise a final finding resulting from monitoring or an investigation. That information which does not contain a final finding may be made public in a legal proceeding concerning a citation issued to an EGH, or denial, suspension or revocation of certification;
- b.* Names of all complainants;
- c.* Names of tenants of an EGH, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator.

321—29.18(231B) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

These rules are intended to implement Iowa Code Supplement chapter 231B.

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