

**PERSONS WITH DISABILITIES DIVISION [431]**

Created within the Human Rights Department[421] by Iowa Code sections 216A.71 to 216A.79

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## CHAPTER 1 ORGANIZATION

**431—1.1(216A) Function.** The division of persons with disabilities, within the department of human rights, was created pursuant to Iowa Code section 216A.1, and is required to carry on a continuing program to promote the employment of persons with disabilities.

**431—1.2(216A) Organization.**

**1.2(1) Location.** The office for the division of persons with disabilities is located in the Department of Human Rights, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. The telephone number is (515) 242-6172 or (888) 219-0471 (v/tty). The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday.

**1.2(2) Method of contacting the division of persons with disabilities.** Citizens may contact the office by telephone, mail or personal visits. Citizens may call the office from within the state, station-to-station collect. Citizens who call the office may ask the staff to return the call on the division's telephone lines.

**1.2(3) Composition of staff.**

*a. Administrator.* The governor shall appoint the administrator, subject to senate confirmation. The administrator shall serve at the pleasure of the governor. The administrator is responsible for the overall administration of the program(s). The administrator determines the number and type of personnel and makes staffing and budgetary recommendations to the commission; carries out policies implemented by the commission; recruits, interviews, appoints, trains, supervises, evaluates and terminates staff; plans and oversees execution of the budget; ensures provision of adequate services in the application of policies, rules and regulations as adopted by the commission; develops, establishes and maintains cooperative working relations with public and private agencies and organizations; identifies legislative issues; interprets program objectives and promotes public interest in and acceptance of persons with disabilities; and maintains an adequate reporting system for necessary records.

*b. Consultant(s).* The consultants provide technical services related to disability in the areas of employment, independent living, physical access, housing, transportation, recreation, and equal opportunity. The consultants act as liaisons with elected officials, governmental agencies, human resource professionals, and local groups in order to clarify the needs of persons with disabilities and to establish and maintain the plans and programs dealing with disabilities. The consultants analyze and report data obtained on programs, issues and services relating to disability issues. The consultants provide education, information and referral services to citizens.

**431—1.3(216A) Commission of persons with disabilities.**

**1.3(1) Commission established.** The commission of persons with disabilities is established, pursuant to Iowa Code section 216A.72, consisting of 24 members and 10 nonvoting ex officio members. The members of the commission shall elect a chairperson, vice chairperson, and secretary of the commission by a majority vote at the annual meeting. All members are appointed by the governor to serve a term of two years.

**1.3(2) Meetings.** The commission of persons with disabilities meets at least once each quarter. The first regular meeting of the fiscal year is the annual meeting. A majority of the members shall constitute a quorum. All meetings will be held in facilities accessible and functional for people with physical disabilities. A good faith effort will be made to have all written materials available in braille or on audiotape if requested by people with visual impairments and to provide sign language interpreters for people who are deaf if requests are received within a reasonable time prior to the meeting. Notice of a meeting is published at least 72 hours prior to the meeting and will contain the specific date, time and place of the meeting. Agenda are available to any interested persons prior to the meeting. All meetings are open to the public unless a closed session is voted by two-thirds of the entire membership or by all members present, pursuant to Iowa Code section 21.5. The operation of a commission meeting will be governed by the following rules of procedure:

*a.* When a quorum is present, a position is carried by an affirmative vote of a majority of the members present.

*b.* Persons wishing to appear before the commission shall submit the request to the commission office not less than 14 days prior to the meeting. Presentations may be made at the discretion of the chair and only upon matters appearing on the agenda.

*c.* Special meetings may be called by the chairperson upon finding good cause and shall be held in strict accordance with Iowa Code chapter 21. Special meetings may also be called by a majority of the membership.

*d.* Written materials to be presented at commission meetings should be submitted to the office at least seven working days prior to the meeting.

*e.* Cameras and recording devices may be used at open meetings, provided they do not obstruct the meeting. The presiding officer may request a person using such a device to discontinue its use when it is obstructing the meeting. If a person fails to comply with the request, the presiding officer shall order that person excluded from the meeting.

*f.* The presiding officer may exclude any person from the meeting for repeated behavior that disrupts or obstructs the meeting.

*g.* Any vote by mail shall have the tabulated results presented at the next regular meeting of the commission and the ballots retained for a period of six months for confirmation of results.

*h.* Cases not covered by these rules shall be governed by Robert's Rules of Order (newly revised).

**1.3(3) Minutes.** Minutes of the commission meetings are prepared and sent to commission members at least two weeks before the next regular meeting. Approved minutes are available at the commission office for inspection during business hours. Copies may be obtained pursuant to 421—2.3(22) by contacting the office.

**1.3(4) Duties.** Duties of the commission are listed in Iowa Code section 216A.77.

**1.3(5) Committees and task forces.** Committees comprised of commission members and task forces comprised of commission members and nonmembers may be assigned by the presiding officer to accomplish the duties of the commission.

**1.3(6) Executive committee.** The executive committee shall be comprised of the officers of the commission and three other members appointed by the chair and approved by the membership. The executive committee shall function as the governing body of the commission between commission meetings and shall make recommendations to the commission for new policies. It is empowered to take action on behalf of the commission when such action is required between regular meetings and deliberation by the full commission is not feasible. Furthermore, the executive committee shall:

*a.* Screen and recommend two or more candidates to the commission for appointment as administrator, and

*b.* Conduct the administrator's annual performance evaluation and report to the commission on the evaluation results.

Notice of executive committee meeting shall be provided to all commission members no later than 48 hours in advance of the scheduled meeting.

**1.3(7) Powers.** The commission shall have all powers necessary to carry out the functions and duties specified in Iowa Code section 216A.77 including, but not limited to, the power to establish committees and task forces, to solicit and accept gifts and grants, to adopt rules according to chapter 17A for the commission and division, and to contract with public and private groups to conduct its business.

**1.3(8) Report.** The commission shall make a report of its activities and recommendations to the general assembly no later than September 30 of each year.

**1.3(9) Conflict of interest.** A conflict of interest exists when members of the commission participate in a way that directly affects the personal or financial interests of the commission members. In order to avoid conflict of interest problems, commission members who have a personal or financial interest in an action must abstain from participating in the entire process which would include both discussion and voting. The commission members who have or think they may have a conflict of interest should declare that there is or may be a conflict of interest and request a determination from the commission. Where a

conflict of interest is determined to exist, commission members should abstain from voting and should be recorded as abstaining when votes are taken.

These rules are intended to implement Iowa Code section 216A.71 to 216A.79.

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CHAPTER 2  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**431—2.1(22) Adoption by reference.** The commission adopts by reference 421—Chapter 2, Iowa Administrative Code.

**431—2.2(22) Custodian of records.** The custodian for the records maintained by this division is the division administrator.

These rules are intended to implement Iowa Code chapters 17A and 22 and Iowa Code section 216A.6.

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CHAPTER 3

ADVISORY COUNCIL ON HEAD INJURIES

Transferred to Department of Public Health, 641—Chapter 55, IAB 9/30/92, effective 9/14/92.



CHAPTER 4  
PETITIONS FOR RULE MAKING

**431—4.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the petitions for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate office)”, insert “division of persons with disabilities, department of human rights”.

2. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF PERSONS WITH DISABILITIES”.

3. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

[Filed 5/14/99, Notice 4/7/99—published 6/2/99, effective 7/7/99]



CHAPTER 5  
AGENCY PROCEDURE FOR RULE MAKING

**431—5.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the agency procedure for rule making segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(commission, board, council, director)”, insert “administrator”.
2. In lieu of the words “(specify time period)”, insert “one year”.
3. In lieu of the words “(identify office and address)”, insert “Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
4. In lieu of the words “(designate office and telephone number)”, insert “the administrator at (515)281-8725 voice/tty”.
5. In lieu of the words “(designate office)”, insert “Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
6. In lieu of the words “(specify the office and address)”, insert “Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 6  
DECLARATORY ORDERS

**431—6.1(17A) Adoption by reference.** The division of persons with disabilities hereby adopts the declaratory orders segment of the Uniform Rules on Agency Procedure printed in the first volume of the Iowa Administrative Code, with the following amendments:

1. In lieu of the words “(designate agency)”, insert “division of persons with disabilities”.
2. In lieu of the words “(designate office)”, insert “Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
3. In lieu of the words “(AGENCY NAME)”, insert “DIVISION OF PERSONS WITH DISABILITIES”.
4. In lieu of the words “\_\_\_\_\_ days (15 or less)”, insert “10 days”.
5. In lieu of the words “\_\_\_\_\_ days” in subrule 6.3(1), insert “20 days”.
6. In lieu of the words “(designate official by full title and address)”, insert “Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
7. In lieu of the words “(specify office and address)”, insert “Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319”.
8. In lieu of the words “(agency name)”, insert “division of persons with disabilities”.
9. In lieu of the words “(designate agency head)”, insert “administrator”.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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CHAPTER 7  
WAIVER RULES

**431—7.1(17A) Definition.** The term “waiver” as used in this chapter means a prescribed waiver or variance from a specific rule or set of rules of this division applicable only to an identified person on the basis of the particular circumstances of that person.

**431—7.2(17A) Scope of chapter.** This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

**431—7.3(17A) Applicability.** This chapter applies only to waivers of those division rules that are within the exclusive rule-making authority of the division. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the division does not possess statutory authority to bind a court, to any extent, with its definition.

**431—7.4(17A) Compliance with law.** The division may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

**431—7.5(17A) Criteria for a waiver.** The division may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person, if the division finds that the waiver is consistent with rules 7.3(17A) and 7.4(17A) of this chapter, that the waiver would not prejudice the substantial legal rights of any person, and either that:

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or
2. The following criteria have been met:
  - The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and
  - The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

In determining whether a waiver would be consistent with the public interest, the division administrator shall consider whether, if a waiver is granted, the public health, safety, and welfare will be adequately protected by other means that will ensure a result that is substantially equivalent to full compliance with the rule.

**431—7.6(17A) Division discretion.** The final decision to grant or deny a waiver shall be vested in the division administrator. This decision shall be made at the discretion of the division upon consideration of relevant facts.

**431—7.7(17A) Burden of persuasion.** The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant the petitioner a waiver based upon the criteria contained in rule 7.5(17A) of this chapter.

**431—7.8(17A) Contents of petition.** A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is requested.

3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented 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 petitioner and the division relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the division'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 of the waiver request to furnish the division with information relevant to the waiver.

**431—7.9(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the division 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 division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

**431—7.10(17A) Notice.** The division shall acknowledge the petition upon receipt. The division shall ensure that, within 30 days of receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting to the fact that notice has been provided.

**431—7.11(17A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for waiver of a rule or set of rules filed within a contested case and shall otherwise apply to division proceedings for a waiver only when the division so provides by rule or order or is required to do so by statute or other binding law.

**431—7.12(17A) 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 operative time period of a waiver if one is issued.

**431—7.13(17A) Conditions.** The division may condition the granting of the waiver on such conditions that the division deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

**431—7.14(17A) Time for ruling.** The division 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, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

**431—7.15(17A) When deemed denied.** Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver as required by rule 7.12(17A).

**431—7.16(17A) Service of orders.** 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.

**431—7.17(17A) Record keeping.** Subject to the provisions of Iowa Code section 17A.3(1) “e,” the division shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the division office during regular business hours.

**431—7.18(17A) Cancellation of a waiver.** A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld from the division or knowingly misrepresented to the division material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or
3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

**431—7.19(17A) Violations.** A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this 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.

**431—7.20(17A) Defense.** After the division issues an order granting a waiver, the order shall constitute a defense, within the 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.

**431—7.21(17A) Appeals.** Appeals within the division from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and division rules. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute.

These rules are intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

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