

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

PREAMBLE

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

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

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

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

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

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

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

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

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

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

“Collaborative care plan” means the plan of care developed for a member by the interdisciplinary resident care committee.

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

“Commission” means the Iowa commission of veterans affairs.

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

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

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

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

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

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

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

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

“Free time” means 12 days of leave time each calendar year for which the member is not charged for care during absence.

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

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

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

“Interdisciplinary resident care committee” or *“IRCC”* means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and other staff, as appropriate, who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

“IVH” means the Iowa Veterans Home.

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

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

“Member” means a patient or resident of IVH.

“Member support” means the dollar amount which is billed monthly to the member or legal representative for the member’s care.

“PASARR” means preadmission screening and annual resident review.

“Resource” means assets and income.

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

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

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

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

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

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

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

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

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

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

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

e. Individuals who have sufficient means for their own care but who are otherwise eligible to become members of IVH may, if there is room for individuals described in paragraph “*a*” above, be admitted and allowed to remain at IVH upon payment of the cost of the individual’s care in accordance with rules 801—10.14(35D) to 801—10.23(35D).

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

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

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

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

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

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

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

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

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

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

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

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

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

a. The county commission of veterans affairs’ office.

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

c. IVH.

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

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

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

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

- c.* If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.
- d.* An original or a certified copy of applicant's birth certificate if not in receipt of Social Security.
- e.* A copy of divorce decrees or death certificate for the spouse, if applicable.
- f.* A completed "Personal Functional Assessment," Form 475-0837.
- g.* A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.
- h.* A completed "Financial Affidavit," Form 475-0839.

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

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

801—10.4(35D) Application processing.

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

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

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

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

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

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

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

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

d. Following the applicant's admission to a nursing care unit, the PASARR is completed.

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

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

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

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

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

801—10.6(35D) Admission to IVH.

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

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

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

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

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

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

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

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

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

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

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

801—10.7 to 10.10 Reserved.

801—10.11(35D) Member rights.

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

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

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

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

801—10.12(35D) Member responsibilities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.12(3) In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 801—10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support

obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

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

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

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

801—10.13 Reserved.

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

10.14(1) A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 801—10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

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

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

- a.* All days in the month for which the member received care (in-house).
- b.* All leave days in excess of the 12 free days up through the fifty-ninth leave day. Any leave days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.
- c.* The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. A hospital stay may occur more than once in a calendar year.

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801—10.15(35D) Per diems.

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

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

b. Domiciliary level of care.

(1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

10.15(2) Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed. The provisions of 38 U.S.C. 1745(a), which were established by Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), set forth a mechanism for paying a higher per diem rate for certain veterans who have service-connected disabilities and are receiving nursing home care in state homes.

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

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

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

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

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

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

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

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

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

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

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

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

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

5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) Any other asset excluded by statute.

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

c. Assets of a married member with spouse in a care facility. If a member's spouse is residing in a nursing facility, including IVH, the member shall be treated as a single member for asset determination

purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

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

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 (the amount set by 441 IAC 75.5(3) “d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

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

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

(3) Report of results. The department of human services shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 801—10.45(35D).

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

10.16(3) When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 801—10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

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

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

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

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

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

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

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

- (2) Lists the asset with a real estate broker or other agent appropriate to the asset.
 - (3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.
 - (4) Does not refuse a reasonable offer.
 - (5) Does not sell the asset for an unreasonably low price.
 - e. Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 801—10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.
- [ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.17(35D) Divestment of assets.

10.17(1) “Intentional divestment of assets” means:

- a. To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or
- b. To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

10.17(2) Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

- a. Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.
- b. In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:
 - (1) The fair market value of the compensation;
 - (2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and
 - (3) That the agreement, contract, or expectation was established at the time of transfer.

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

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

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

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

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

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

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

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

- a.* The following types of income are exempt in the computation of member support:
- (1) The earned income of the spouse or dependents.
 - (2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).
 - (3) Any other income that can be specifically identified as accruing to the spouse or dependents.
 - (4) Nonrecurring gifts, contributions or winnings, not to exceed \$60 in a calendar quarter.
 - (5) Interest income of less than \$20 per month from any one source.
 - (6) State bonus for military services.
 - (7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.
 - (8) Any money received by a member from the sale of items constructed or grown at IVH as part of a therapy program.
 - (9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described at rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.
 - (10) Personal loans.
 - (11) In-kind contributions to the member.
 - (12) Title XIX payments.
 - (13) Yearly DVA compensation clothing allowance for those who qualify.
 - (14) Other income as specifically exempted by statute.
 - (15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2) "a"(6) and (7).
 - (16) Income from participating as outlined in the community reentry program (IVH policy #265A) or the IVH discharge planning policy (IVH policy #265).
- b.* Personal needs allowance. All members shall have a monthly income intended to cover the purchase of clothing and incidentals.
- (1) All income up to the first \$140 shall be kept as a personal needs allowance.
 - (2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.
- c.* Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 801—10.14(35D).
- d.* Determining income from property.
- (1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.
 - (2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.
- e.* The amount of income to consider in the computation of member support shall be as follows:
- (1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.
 - (2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.
 - (3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.

(4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.

(5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.

10.19(3) Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:

a. Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.

b. Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3) "a."

c. Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

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

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

10.19(4) Income disbursements.

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

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

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

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801—10.20(35D) Other income.

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

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

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

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

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

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

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

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

10.20(9) Any income as defined in rule 801—10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 801—10.16(35D).

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

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

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

801—10.23(35D) Penalty.

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

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

801—10.24 to 10.29 Reserved.

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

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

801—10.31 to 10.34 Reserved.

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

commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

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

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

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

10.35(4) If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

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

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

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

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

801—10.36(35D) Leave and bed holds.

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

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

b. Leaves are required if the member expects to be absent past midnight.

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

d. Hospital leaves. Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day leave time limit as set out in paragraph 10.14(3) "b."

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

Leaves to other medical facilities for the purpose of treatment shall be treated as hospital leaves.

e. General leaves.

(1) Twelve days of leave time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for leave time over 12 days up to and including 59 days.

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

(4) Leave time is not cumulative from one calendar year to another calendar year.

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

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

f. When a member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

g. When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member.

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

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

b. A leave as set out in paragraph 10.36(1) "b" is required if a member expects to be absent past midnight.

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

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

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

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

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.37 to 10.39 Reserved.

801—10.40(35D) Requirements for member conduct. The commandant shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the

commandant may transfer or discharge any member from IVH when the commandant determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

10.40(1) In addition to the member responsibilities as set out in rule 801—10.12(35D), each member shall also comply with the following requirements:

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

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

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

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

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

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

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

h. Members shall not violate state and federal statutes.

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

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

a. For a first offense, a member is counseled by an appropriate staff person and options for correcting the behavior are considered. Options may include but are not limited to:

(1) Funds restriction.

(2) Substance abuse treatment.

(3) Mental health services.

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

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

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

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

c. For a second offense, a member is offered the services above and is placed on probation that warns a third offense may lead to discharge.

d. For a third offense, discharge from IVH in accordance with subrule 10.40(3).

10.40(3) The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member's behavior poses a threat of imminent danger, the commandant may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

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

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

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

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

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

10.42(1) A discharged member shall remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

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

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

801—10.43(35D) Rule enforcement—power to suspend and discharge members. The commandant shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant determines that the health, safety or welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

10.43(1) The commandant shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

a. The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“a,” if the member has demonstrated progress toward the goals established in the member’s collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1)“a” if the member’s actions or behavior jeopardizes the life or safety of other members or staff.

b. The member refuses to utilize the resources available to address issues identified in the member’s collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member’s collaborative care plan.

(2) The member has been notified of the member’s commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)“b,” if the member has demonstrated progress toward the goals established in the member’s collaborative care plan, the IRCC and the commandant may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member’s actions or behavior jeopardizes the life or safety of other members or staff.

c. The member’s medical or life skills needs have been met to the extent possible through the services provided by IVH and the member no longer requires a residential or nursing level of care, as determined by the IRCC.

d. The member requires a level of licensed care not provided at IVH.

10.43(2) Provisions for member following discharge from IVH.

a. If a member is discharged under this rule, the discharge plan shall include placement in a suitable living situation which may include but is not limited to a transitional living program approved by the commission or a living program provided by DVA.

b. If a member is involuntarily discharged under this rule, the commission shall, to the greatest extent possible, ensure against the member being homeless and ensure that the domicile to which the member is discharged is fit and habitable and offers a safe and clean environment which is free from health hazards and provides appropriate heating, ventilation and protection from the elements.

10.43(3) Discharge notice, including right to appeal. An involuntary discharge of a member under this rule shall be preceded by a written notice to the member. The notice shall state that, unless the discharge is an immediate discharge due to the member’s actions or behavior which jeopardizes the life or safety of other members or staff, the effective date of the discharge is 30 calendar days from the date of receipt of the discharge notice, and that the member has the right to appeal the discharge. In addition, the discharge notice shall contain:

a. The stated reason for the proposed discharge or transfer.

b. The actual effective date of the proposed discharge or transfer.

c. A statement in not less than 12-point type which reads: “You have a right to appeal the facility’s decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as “Commission”) within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of Chairperson, Commission of Veterans Affairs.”

10.43(4) Appeal by member.

a. If a member appeals the discharge under this rule, the member shall be provided with the information relating to the appeals process as specified in rule 801—10.47(35D).

b. If a member appeals the discharge under this rule, the involuntary discharge appeal process in rule 801—10.47(35D) shall apply.

10.43(5) By the fourth Monday of each session of the general assembly, the commandant shall submit a report annually to the senate veterans affairs committee and the house veterans affairs committee specifying the number, circumstances and placement of each member involuntarily discharged from IVH under this rule during the previous calendar year.

10.43(6) Any involuntary discharge by the commandant under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.44 Reserved.

APPEAL PROCESS

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

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

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

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

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

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

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

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

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

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

Rules 801—10.45(35A,35D) and 801—10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

801—10.47(35D) Involuntary discharge appeal. When a member appeals an involuntary discharge, the following provisions shall apply:

10.47(1) The member shall file the appeal with the commission within 5 calendar days of receipt of the discharge notice.

10.47(2) The commission shall render a decision on the appeal and notify the member of the decision in writing within 10 calendar days of the filing of the appeal.

10.47(3) If the member is not satisfied with the decision of the commission, the member may appeal the commission's decision by filing an appeal with the department of inspections and appeals within 5 calendar days of being notified in writing of the commission's decision.

10.47(4) The department of inspections and appeals shall render a decision on the appeal of the commission's decision and notify the member of the decision in writing within 15 calendar days of the filing of the appeal with the department.

10.47(5) The maximum time period that shall elapse between receipt by the member of the discharge notice and actual discharge shall not exceed 55 days which includes the 30-day discharge notice period and any time during which any appeals to the commission or the department of inspections and appeals are pending.

10.47(6) If a member is not satisfied with the decision of the department of inspections and appeals, the member may seek judicial review in accordance with Iowa Code chapter 17A. A member's discharge under rule 801—10.43(35D) shall be stayed while judicial review is pending.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

801—10.48 and 10.49 Reserved.

GROUPS AND FACILITY ADMINISTRATION

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

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

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

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

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

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

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

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

801—10.51(35D) Mail.

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

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

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

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

801—10.52(35D) Interviews and statements.

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

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

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

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

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

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

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

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

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

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

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

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

10.56(3) Pets are not allowed inside the cottages without prior authorization. Visitors who bring pets must comply with IVH rules regarding pet health and safety. Visitors may maintain portable pet kennels outside.

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

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

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

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

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

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

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

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

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

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

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