



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXIII
November 1, 2000

NUMBER 9
Pages 689 to 740

CONTENTS IN THIS ISSUE

Pages 701 to 733 include **ARC 0226B** to **ARC 0251B**

AGENDA

Administrative Rules Review Committee 694

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Interest in a retail establishment, 16.2
ARC 0250B 724

ALL AGENCIES

Schedule for rule making 692
Publication procedures 693
Administrative rules on CD-ROM 693
Agency identification numbers 699

ATTORNEY GENERAL[61]

Opinions summarized 735
Notice, DNA profiling, 8.1, 8.2, 8.5, 8.6
ARC 0226B 701
Notice, Crime victim compensation program,
9.25 to 9.36 **ARC 0242B** 701

CITATION OF ADMINISTRATIVE RULES 691

CORRECTIONS DEPARTMENT[201]

Filed, North central correctional facility,
ch 26 **ARC 0243B** 725
Filed Emergency, Safety training, 37.6(5)
ARC 0244B 719

DELAYS

Natural Resource Commission[571]
Unprotected nongame, 76.1(2) 734
Revenue and Finance Department[701]
Recovery of fees, 107.16, 108.4"6" 734

HUMAN SERVICES DEPARTMENT[441]

Notice, Departmental organization—division of
policy and rule integration, 1.3(2), 1.6
ARC 0227B 708
Notice, Increase in RCF reimbursement rate,
52.1(3) **ARC 0251B** 708
Notice, Medicaid coverage—infant and
toddler program providers and local
education agency providers, 77.43, 77.44,
78.49, 78.50, 79.1(2), 80.2(2), 88.5(3)
ARC 0228B 709

Filed, Eligibility—FIP and Medicaid under
FMAP and FMAP-related Medicaid coverage
groups, amendments to chs 40, 41, 47, 48, 60,
75, 93; rescind ch 42 **ARC 0230B** 726

Filed Emergency, Increase in RCF
reimbursement rate, 52.1(3) **ARC 0231B** 719

Filed, Medicaid coverage for physician
treatment of childhood dental caries
with topical fluoride varnish, 78.1(24)
ARC 0232B 727

Filed, RHCs and FQHCs—cost-based
reimbursement, 79.1(2), 88.14 **ARC 0233B** 727

Filed, Rehabilitative treatment and supportive
services for children in out-of-home placement,
182.2(1), ch 185, division II, preamble
ARC 0234B 728

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

Filed, Low-income housing tax credits—
compliance manual, 12.3, 12.4 **ARC 0237B** 729

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Delay, Unprotected nongame, 76.1(2) 734
Notice, Hunting license, 15.1(1) **ARC 0240B** 711
Notice, Grant review process—project eligibility
and application rating system, 23.5, 23.6(2),
23.7(3) **ARC 0239B** 712

PERSONNEL DEPARTMENT[581]

Notice and Notice Terminated, Uniform rules
for waivers, ch 33 **ARC 0238B** 713

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Notice, Podiatry examiners—continuing education,
license renewal, discipline, 220.1, 220.7,
220.8, 220.100 to 220.104, 220.106 to
220.109, 220.200, 220.212, ch 222
ARC 0249B 715
Filed, Dietetic examiners—continuing education
and licensure, 80.1, 80.8, 80.100 to
80.108, 80.214, 80.220, ch 81 **ARC 0248B** 730

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

Subscriptions and Distribution Telephone: (515)242-5120
Fax: (515)242-5974

KATHLEEN K. BATES, Administrative Code Editor Telephone: (515)281-3355
STEPHANIE A. HOFF, Assistant Editor (515)281-8157
Fax: (515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly.
July 1, 2000, to June 30, 2001 \$264.00 plus \$15.84 sales tax

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplements are as follows:

Iowa Administrative Code - \$1,210.31 plus \$72.62 sales tax

(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin.)

Iowa Administrative Code Supplement - \$425.61 plus \$25.54 sales tax

(Subscription expires June 30, 2001)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

**Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120**

PROFESSIONAL LICENSURE DIVISION[645]

(Cont'd)

Filed, Mortuary science examiners—continuing education, discipline, licensing, fees, student practicums, 101.3(1), 101.4 to 101.11, 101.98, 101.100 to 101.109, 101.200, 101.212 to 101.215, 101.300, ch 102 **ARC 0247B** 730

PUBLIC HEALTH DEPARTMENT[641]

Notice, Tobacco use prevention and control community partnership initiative; tobacco use prevention and control funding process, chs 151, 152 **ARC 0246B** 718

Filed Emergency, Tobacco use prevention and control community partnership initiative; tobacco use prevention and control funding process, chs 151, 152 **ARC 0245B** 720

PUBLIC HEARINGS

Summarized list 696

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Filed, Waivers; fair information practices; greyhound racing; gambling games; accounting and cash control, 1.8, 3.3(7); adopt chs 7, 11, 12; rescind chs 22, 24, 26 **ARC 0241B** 731

REVENUE AND FINANCE DEPARTMENT[701]

Delay, Recovery of fees, 107.16, 108.4"6" 734

SECRETARY OF STATE[721]

Filed Emergency After Notice, "Vote here" signs, 21.8 **ARC 0229B** 722

USURY

Notice 718

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Filed, Waivers, 1.3 **ARC 0236B** 731

Filed, Self-generation, 15.1, 15.11(5) **ARC 0235B** 732

CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
11	Friday, November 10, 2000	November 29, 2000
12	Friday, November 24, 2000	December 13, 2000
13	Friday, December 8, 2000	December 27, 2000

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
 FROM: Kathleen K. Bates, Iowa Administrative Code Editor
 SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, First Floor South, Grimes State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
 kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM 2000 SUMMER EDITION

Containing: **Iowa Administrative Code** (updated through August 2000)
Iowa Administrative Bulletins (January 2000 through August 2000)
Iowa Court Rules (updated through August 2000)

For free brochures and order forms contact:

Legislative Service Bureau
 Attn: Ms. Stephanie Cox
 State Capitol
 Des Moines, Iowa 50319
 Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

Guide to Rule Making, June 1995 Edition, available upon request to the Iowa Administrative Code Division, Grimes State Office Building, First Floor South, Des Moines, Iowa 50319.

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, November 14, 2000, at 9 a.m. in the Ronald Reagan Conference Room (G19), State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the October 18, 2000, Iowa Administrative Bulletin.

Bulletin

ALCOHOLIC BEVERAGES DIVISION[185]

COMMERCE DEPARTMENT[181]"umbrella"

Interest in a retail establishment, 16.2, Filed **ARC 0250B** 11/1/00

ATTORNEY GENERAL[61]

DNA profiling, 8.1, 8.2, 8.5, 8.6, Notice **ARC 0226B** 11/1/00

Crime victim compensation program, 9.25 to 9.36, Notice **ARC 0242B** 11/1/00

CORRECTIONS DEPARTMENT[201]

North central correctional facility, ch 26, Filed **ARC 0243B** 11/1/00

OSHA training, 37.6(5), Filed Emergency **ARC 0244B** 11/1/00

HUMAN SERVICES DEPARTMENT[441]

Departmental organization and procedures, 1.3(2), 1.3(2)"e," 1.6, Notice **ARC 0227B** 11/1/00

Eligibility factors for FIP and Medicaid under FMAP and FMAP-related Medicaid coverage groups, 40.21, 41.21(5), 41.22(3)"c" and "d," 41.22(5), 41.22(14), 41.23(3), 41.24(2)"d," 41.24(8)"b," 41.27(4)"a," 41.27(8)"b," 41.27(8)"b"(9) and (10), 41.28(1), 41.28(4), ch 42, ch 47 division I preamble, 47.1, 47.5(1), 47.5(1)"a," 47.21, 47.41, 47.61, 47.65(4)"a," 48.23(3), 60.4(1), 60.8(1)"c" and "d," 75.1(7)"a"(4), 75.1(14)"c," 75.1(15)"a" and "e," 75.1(28)"h," 75.1(31)"j"(1), 75.1(35)"a"(5), 75.12, 75.13(1), 75.14(5), 75.50, 75.52(4)"c"(5), 75.53(4), 75.54(3), 75.54(4), 75.57(4)"a," 75.57(8)"b," 75.57(8)"b"(9) and (10), 75.57(9)"c"(2), 75.58(1), 75.58(2)"b"(4), 75.59(1)"d," 75.59(2), ch 93 division II preamble, 93.103, 93.105(3), 93.109(1)"b" and "d" to "f," 93.109(2)"a"(1), 93.109(2)"b"(2)"2," 93.110(6)"e"(1), 93.111, 93.112(1)"c" and "e," 93.112(3), 93.114(3)"d" to "f," 93.122, 93.132"9," 93.133(2)"b," Filed **ARC 0230B** 11/1/00

State supplementary assistance (SSA)—increase in maximum rate for residential care facilities, 52.1(3), Notice **ARC 0251B**, also Filed Emergency **ARC 0231B** 11/1/00

Medicaid payment for services provided by local school districts or through infants and toddlers with disabilities program, 77.43, 77.44, 78.49, 78.50, 79.1(2), 80.2(2)"aq" and "ar," 88.5(3)"j" and "k," Notice **ARC 0228B** 11/1/00

Physicians' services—oral health screening and fluoride treatment for children, 78.1(24), Filed **ARC 0232B** 11/1/00

Cost-based reimbursement for RHCs and FQHCs, 79.1(2), 88.14, Filed **ARC 0233B** 11/1/00

Rehabilitative treatment services, 182.2(1)"b," ch 185 division II preamble, Filed **ARC 0234B** 11/1/00

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"

Low-income housing tax credit program—compliance manual, 12.3, 12.4, Filed **ARC 0237B** 11/1/00

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Hunting licenses, 15.1(1), Notice **ARC 0240B** 11/1/00

Wildlife habitat promotion with local entities program, 23.5, 23.6(2), 23.7(3), Notice **ARC 0239B** 11/1/00

PERSONNEL DEPARTMENT[581]

Uniform rules for waivers, ch 33, Notice **ARC 9626A** Terminated, also Notice **ARC 0238B** 11/1/00

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Dietetic examiners, 80.1, 80.8(5), 80.8(6), 80.100 to 80.108, 80.214, 80.220, ch 81, Filed **ARC 0248B** 11/1/00

Mortuary science examiners, 101.3(1)"i," 101.4, 101.5, 101.5(4), 101.6, 101.6(3), 101.6(16), 101.7 to 101.11, 101.98, 101.100 to 101.109, 101.200, 101.212 to 101.215, 101.300, ch 102, Filed **ARC 0247B** 11/1/00

Podiatry examiners, 220.1, 220.1(18), 220.7, 220.8, 220.8(13), 220.8(14), 220.12, 220.100 to 220.104, 220.106 to 220.109, 220.200, 220.212, ch 222, Notice **ARC 0249B** 11/1/00

PUBLIC HEALTH DEPARTMENT[641]

Tobacco use prevention and control community partnership initiative; tobacco use prevention and control funding process, chs 151 and 152, Notice **ARC 0246B**, also Filed Emergency **ARC 0245B** 11/1/00

RACING AND GAMING COMMISSION[491]

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Waivers; fair information practices; greyhound racing; gambling games; accounting and cash control, 1.8, ch 3 title and introductory paragraph, 3.3(7)"c," chs 7, 11, 12, 22, 24, and 26, Filed **ARC 0241B** 11/1/00

SECRETARY OF STATE[721]

"Vote here" signs, 21.8, Filed **Emergency After Notice** **ARC 0229B** 11/1/00

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

Waivers, 1.3, 2.2(17), Filed **ARC 0236B** 11/1/00

Self-generation, 15.1, 15.11(5), Filed **ARC 0235B** 11/1/00

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: **Terms ending April 30, 2003.**

Senator H. Kay Hedge
3208 335th Street
Fremont, Iowa 52561

Representative Janet Metcalf
12954 Oak Brook Drive
Urbandale, Iowa 50323

Senator Merlin E. Bartz
2081 410th Street
Grafton, Iowa 50440

Representative Clyde Bradley
835 Blackhawk Lane
Camanche, Iowa 52730

Senator Patricia M. Harper
3336 Santa Maria Drive
Waterloo, Iowa 50702

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Representative Minnette Doderer
2008 Dunlap Court
Iowa City, Iowa 52245

Senator Sheldon Rittmer
3539 230th Street
DeWitt, Iowa 52742

Representative Geri Hüser
213 7th Street NW
Altoona, Iowa 50009

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-5995

Brian Gentry
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ATTORNEY GENERAL[61]		
Crime victim compensation, 9.25 to 9.36 IAB 11/1/00 ARC 0242B	Conference Room Suite 100 100 Court Ave. Des Moines, Iowa	November 21, 2000 10 a.m.
BANKING DIVISION[187]		
Examinations, ch 3 IAB 10/18/00 ARC 0200B	Division Conference Room 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Housing fund, 25.2, 25.4(1), 25.6(2), 25.7, 25.8 IAB 10/18/00 ARC 0196B	Northeast Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	November 8, 2000 1:30 p.m.
Assistive device tax credit, ch 66 IAB 10/18/00 ARC 0194B	Northwest Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 1 p.m.
Life science enterprises, ch 67 IAB 10/18/00 ARC 0195B	Marketing South Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	November 7, 2000 2 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Medicaid coverage for services provided by local school districts and infants and toddlers with disabilities program, 77.43, 77.44, 78.49, 78.50, 79.1(2), 80.2(2), 88.5(3) IAB 11/1/00 ARC 0228B	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	November 22, 2000 10 a.m.
INFORMATION TECHNOLOGY DEPARTMENT[471]		
Organization and operation, ch 1 IAB 10/18/00 ARC 0205B	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Fair information practices, ch 2 IAB 10/18/00 ARC 0206B	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.

INFORMATION TECHNOLOGY DEPARTMENT[471] (Cont'd)

Petitions for rule making, ch 3 IAB 10/18/00 ARC 0208B	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Agency procedure for rule making, ch 4 IAB 10/18/00 ARC 0209B	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.
Declaratory orders, ch 5 IAB 10/18/00 ARC 0207B	Director's Conference Room Level B Hoover State Office Bldg. Des Moines, Iowa	November 7, 2000 2 to 4 p.m.

INSURANCE DIVISION[191]

Use of credit history for underwriting or rate-making purposes, 20.12 IAB 10/18/00 ARC 0188B	Hearing Room 330 Maple St. Des Moines, Iowa	November 8, 2000 10 a.m.
--	---	-----------------------------

LABOR SERVICES DIVISION[875]

Elevators, amendments to chs 71 to 74, 76, 77 IAB 10/18/00 ARC 0198B	1000 E. Grand Ave. Des Moines, Iowa	November 7, 2000 1:30 p.m. (If requested)
---	--	---

MEDICAL EXAMINERS BOARD[653]

Reorganization of rules, amendments to chs 1, 2, 10, 14, 17 IAB 10/18/00 ARC 0210B	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 2 p.m.
Uniform waiver and variance rule, ch 3, 11.9(3), 11.36, 12.4, 13.12, 14.4(6), 14.5(10), 14.11, 14.30 IAB 10/18/00 ARC 0212B	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 3 p.m.
License to practice as a resident physician; fees, 11.6, 11.31(4) IAB 10/18/00 ARC 0214B	Suite C 400 SW Eighth St. Des Moines, Iowa	November 8, 2000 2:30 p.m.

NATURAL RESOURCE COMMISSION[571]

Hunting license, 15.1(1) IAB 11/1/00 ARC 0240B	Conference Room—5th Floor West Wallace State Office Bldg. Des Moines, Iowa	November 22, 2000 1 p.m.
Wildlife habitat promotion with local entities—grant review process, 23.5, 23.6(2), 23.7(3) IAB 11/1/00 ARC 0239B	Conference Room—5th Floor East Wallace State Office Bldg. Des Moines, Iowa	November 22, 2000 10 a.m.

PERSONNEL DEPARTMENT[581]

Uniform rules for waivers, ch 33 IAB 11/1/00 ARC 0238B	7401 Register Dr. Des Moines, Iowa	November 21, 2000 9 a.m.
---	---------------------------------------	-----------------------------

PROFESSIONAL LICENSURE DIVISION[645]

Behavioral science examiners, 30.1, 30.3(2), 30.4(2), 30.5(10), 30.8 to 30.10, 31.1 to 31.6, 31.8 to 31.10, ch 32 IAB 10/18/00 ARC 0220B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 9, 2000 9 to 11 a.m.
---	---	----------------------------------

Chiropractic examiners, 40.1, 40.8 to 40.24, 40.51, 40.52, 40.62 to 40.67, 40.69 to 40.73, chs 43 and 44 IAB 10/18/00 ARC 0219B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 14, 2000 1 to 3 p.m.
--	---	----------------------------------

Podiatry examiners, 220.1, 220.7, 220.8, 220.100 to 220.104, 220.106 to 220.109, 220.200, 220.212, ch 222 IAB 11/1/00 ARC 0249B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 21, 2000 9 to 11 a.m.
--	---	-----------------------------------

Athletic training examiners, 350.13 to 350.21, 350.26, 350.31, ch 351 IAB 10/18/00 ARC 0221B	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	November 14, 2000 9 to 11 a.m.
--	---	-----------------------------------

PUBLIC HEALTH DEPARTMENT[641]

Tobacco use prevention and control— community partnership initiative and funding process, chs 151, 152 IAB 11/1/00 ARC 0246B (See also ARC 0245B herein)	Conference Room—5th Floor East Lucas State Office Bldg. Des Moines, Iowa	November 21, 2000 1 to 2 p.m.
--	--	----------------------------------

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
 Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 0226B

ATTORNEY GENERAL[61]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 13.10, the Attorney General hereby gives Notice of Intended Action to amend Chapter 8, "DNA Profiling," Iowa Administrative Code.

These amendments revise the Attorney General's rules that govern procedures for DNA profiling. The Attorney General is required to adopt rules concerning classifications of crimes that require offenders to provide samples for DNA profiling.

The purpose of Item 1 is to redefine "responsible agency." As defined under current rule, "responsible agency" includes the district court and the Iowa Board of Parole when inmates are being considered for work release, parole, or probation. It is necessary that the Department of Corrections and judicial district department of correctional services and the county sheriffs be defined as responsible agencies so that DNA samples may be taken from offenders prior to their confinement in jail or discharge from the custody of the Director of the Department of Corrections or judicial district department of correctional services. This language will now comply with the new legislation that went into effect July 1, 2000.

In Item 2, rule 8.2(13) is amended to clarify that responsible agencies have authority to determine if a person who has previously provided a specimen is required to provide a second or subsequent specimen.

In Item 3, subrule 8.5(1) is stricken because the subject matter of this subrule will be covered by the administrative rules to be adopted by the Department of Public Safety, and 8.5(2) is amended by changing the title from director to administrator when addressing the head of the criminalistics laboratory.

Item 4 rescinds rule 8.6(13) because the Department of Public Safety has published notice and is currently collecting DNA samples.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 21, 2000. Written comments should be directed to Deputy Attorney General Douglas Marek, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319; fax (515)281-4209; telephone (515)281-5112.

These amendments are intended to implement Iowa Code section 13.10.

The following amendments are proposed.

ITEM 1. Amend **61—8.1(13)**, definition of "responsible agency," as follows:

"Responsible agency." The district court is the responsible agency under these rules in those cases where a person is being considered for probation. The Iowa board of parole is the responsible agency under these rules in those cases where a person is being considered for work release or parole. *The department of corrections or the judicial district department of correctional services is the responsible agency under these rules in those cases where a person is being committed*

to or discharged from the custody of the director of the department of corrections or the judicial district department of correctional services. The county sheriff is the responsible agency under these rules in those cases where a person is being confined to the county jail. The responsible agency shall require the taking of a DNA sample.

ITEM 2. Amend 61—8.2(13) as follows:

61—8.2(13) Persons required to submit specimens.

8.2(1) A person who has been convicted at any time of a listed offense shall, prior to being granted probation, parole or, work release or discharge, submit to DNA profiling under the provisions of Iowa Code section 13.10.

8.2(2) *If the person has previously provided a specimen, the responsible agency shall make a determination as to whether another DNA specimen should be provided.*

ITEM 3. Amend 61—8.5(13) as follows:

61—8.5(13) Prescribed sample techniques.

~~**8.5(1)** The sample shall consist of whole blood, drawn by a person selected by the responsible agency. The person drawing blood shall meet all licensing requirements for drawing blood specimens.~~

8.5(2) The sample size, methods of drawing and preservation, labeling and shipping shall be as specified by the ~~director~~ administrator of the division of criminal investigation criminalistics laboratory, department of public safety.

ITEM 4. Rescind **61—8.6(13)**.

ARC 0242B

ATTORNEY GENERAL[61]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 915.82(2), the Attorney General's Crime Victim Assistance Board hereby gives Notice of Intended Action to amend Chapter 9, "Victim Assistance Program," Iowa Administrative Code.

Chapter 9, Division II, provides for the general administration of the Crime Victim Compensation Program as authorized in Iowa Code chapter 915. The proposed amendment rescinds the rules in Division II of Chapter 9 and adopts new rules in lieu thereof. The new rules reflect changes made in statute, indexed policy, and procedure since the amendment of Chapter 9, Division II, Crime Victim Compensation, in 1995. The proposed amendment establishes program definitions, eligibility determination and award computation procedures, and claimant appeals processes.

Any interested person may make written or oral comments on the proposed amendment on or before November 21, 2000. Written materials should be directed to Marti Anderson, LISW, Director of Crime Victim Assistance, Crime Victim Assistance Division, 100 Court Avenue, Suite 100, Des Moines, Iowa 50319; fax (515)281-8199. Persons who wish to make oral comments should contact Marti Anderson at 1-800-373-5044 or at the above address.

Also, there will be a public hearing on this proposed amendment at 10 a.m. on November 21, 2000, in the Confer-

ATTORNEY GENERAL[61](cont'd)

ence Room of the Crime Victim Assistance Division, 100 Court Avenue, Suite 100, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement Iowa Code sections 915.80 through 915.94.

The following amendment is proposed.

Amend 61—Chapter 9 by rescinding rules 61—9.25(912) through 61—9.33(912) and adopting the following new rules in lieu thereof:

61—9.25(915) Administration of the crime victim compensation program. The crime victim assistance division of the department of justice shall administer the crime victim compensation program as provided in Iowa Code chapter 915. All questions, comments, requests for information, or applications for compensation shall be directed to the crime victim assistance division. Requests should be addressed to Crime Victim Assistance Division, 100 Court Avenue, Suite 100, Des Moines, Iowa 50319; telephone (515)281-5044 or 1-800-373-5044.

61—9.26(915) Definitions. For rules of the crime victim compensation program of the crime victim assistance division of the department of justice, the following definitions apply:

“Affinity” means the relationship of persons who are related by marriage, cohabitation, or engagement to be married.

“Applicant” includes the following individuals who file an application with the crime victim compensation program:

1. A victim of a crime as defined in Iowa Code section 915.80(6).

2. A person responsible for the maintenance of a victim.

3. A resident of Iowa who is the victim of an act that would be compensable had it occurred within the state of Iowa and the act occurred in a state or foreign country that does not have a victim compensation program as defined in the federal law.

4. In the event of a victim’s death, the spouse, children, parents, siblings, or persons cohabiting with or related by blood or affinity to the victim. An estate is not an eligible applicant for crime victim compensation. An estate shall, however, be reimbursed for funeral and burial expenses if the estate paid the costs on behalf of an eligible applicant who shall benefit from the proceeds of the estate.

5. A legal representative authorized to act on behalf of any of the persons listed above.

“Board” means the crime victim assistance board of the department of justice.

“Causal relationship” means that the crime would not have occurred without the action of the victim. A causal relationship exists if the actions of the victim result in a foreseeable injury, play a substantial role in the injury, or directly cause the injury.

“Claimant” means an applicant who has been found to be eligible for compensation.

“Cohabiting” means living in the same household. It is not necessary to establish that a sexual relationship exists between the parties.

“Compensation” means moneys awarded by the division as authorized in Iowa Code chapter 915.

“Consent” means to agree to a course of action or to voluntarily allow what is planned or done by another.

“Counseling” means problem solving and support concerning emotional issues that result from a compensable crime. Counseling is a confidential service provided in person on an individual basis or in a group. Counseling has as a primary purpose to enhance, protect and restore a person’s sense of well-being and social functioning. Counseling does not include victim advocacy services such as crisis telephone counseling; conversation in a nonprivate setting such as the common area of a shelter or a courthouse; transportation; or attendance at medical procedures, law enforcement interviews or civil and criminal justice proceedings.

“Crime” as defined in Iowa Code section 915.80 includes:

1. Conduct punishable as a misdemeanor or a felony.

2. Property crimes including but not limited to robbery, residential burglary, and residential arson, where there is a threat of personal injury or harm against a person.

3. Violation of a custody order in which the custodial parent suffers injury.

“Denial” means disqualification of an application or reduction in the amount of compensation paid.

“Department” means the department of justice, attorney general’s office.

“Dependent” means persons who are unable to care for themselves due to injury, disability, or minor age status.

“Director” means the director of the crime victim assistance division established in the department of justice.

“Division” means the crime victim assistance division of the department of justice.

“Incitement” means to urge forward or to goad to action.

“Income” or “wages” means gross income or gross wages.

“Medical care” means services provided by or provided under the supervision of a person licensed under Iowa law as a medical physician or surgeon, osteopathic physician or surgeon, chiropractor, podiatrist, physical therapist, acupuncturist, or dentist. Medical care also includes services rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

“Medically necessary” means items and services, prescribed by a medical provider under the prescriptive authority of the medical provider’s license, which are reasonably necessary to facilitate the victim’s physical and emotional recovery from the compensable crime.

“Pecuniary loss” means the amount of medical or medical-related expenses and shall include, but not be limited to, eyeglasses, hearing aids, dentures, prosthetic devices including those which were taken, lost, or destroyed during the crime, home health care, medications, counseling, pregnancy-related services, equipment rental or purchase, property alteration, transportation for emergencies and medical care provided outside the victim’s county of residence, or health insurance premiums covered by an employer previous to the victim’s disability from the crime. Pecuniary loss shall also include the loss of income that the victim has incurred as a direct result of the injury to the extent that the victim has not been and shall not be indemnified from any other source.

“Personal injury” or “injury” shall mean bodily harm or mental suffering and shall include a victim’s pregnancy or miscarriage resulting from a crime.

“Program” means the crime victim compensation program of the department of justice.

“Provocation” means to cause anger, resentment, or deep feelings that cause or instigate another to take action.

“Public funds” means moneys provided by federal, state, county, city or other local government.

ATTORNEY GENERAL[61](cont'd)

“Reasonable charges” means charges ordinarily charged by the provider of the service to the general public for services of a similar nature.

61—9.27(915) Duties of the division. The duties of the division shall include, but not be limited to, the duties provided for in Iowa Code sections 13.31 and 915.83, as well as:

1. To prepare appropriate forms for the filing and processing of compensation applications.
2. To conduct an administrative review of claims when a request for reconsideration is filed by an applicant with the director.
3. To receive moneys bequeathed, awarded, or donated to the crime victim assistance division by a public or private organization or individual.

61—9.28(915) Application for compensation. An applicant may file an application for compensation by telephone or in writing within two years of the occurrence or discovery of a crime pursuant to Iowa Code section 915.84(1). For a victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, the date of the discovery of the crime shall be considered to be the date when the referral was made. The department may waive the requirements of Iowa Code section 915.84(1) if good cause is shown.

9.28(1) Application postmarked. An application postmarked within the prescribed time period shall be considered timely filed.

9.28(2) Good cause. In determining whether there is good cause for waiver of the two-year application filing requirement, the victim’s age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.28(3) Multiple erroneous claims. When two or more applications are filed by or on behalf of an individual applicant during a calendar month and the applications appear on initial review to be erroneous claims based on innocent misrepresentation or circumstances of a similar nature, the claims shall be treated as a single application. Verification shall be investigated for each crime recorded in a file with multiple erroneous applications. If any of the crimes recorded in a combined application are verified as compensable crimes, the applications for compensation for those crimes shall be separated from the combined file and assigned distinct application numbers. The department will notify the applicant whenever two or more applications have been combined as one application.

9.28(4) Program effective date. The effective date of the crime victim compensation program is January 1, 1983. Victims and survivors of crimes that were committed prior to the effective date are not eligible for compensation.

9.28(5) Concurrent primary and secondary applications. A victim may be both a primary victim and a secondary victim in the same crime. The secondary victim application shall not be opened until a benefit has been exhausted for the primary application and there is documentation of need for further benefits in that category. The secondary victim application shall be considered timely filed if the primary victim application was timely filed.

9.28(6) Concurrent secondary victim applications. A victim may be a secondary victim to multiple primary victims in a crime. A subsequent secondary victim application shall not be opened until a benefit has been exhausted in the first secondary victim application and there is documentation of need for further benefits in that category. Subsequent second-

dary victim applications shall be considered timely filed if the primary victim application was timely filed.

61—9.29(915) Report to law enforcement. A person is not eligible for compensation unless the crime is reported to law enforcement pursuant to Iowa Code section 915.84(2). The department may waive the requirements of Iowa Code section 915.84(2) if good cause is shown.

9.29(1) Law enforcement report sources. The department finds there is good cause to accept that the report of a crime to any of the following is a report to law enforcement pursuant to Iowa Code section 915.84(2):

- a. Sheriffs and their regular deputies.
- b. Marshals and police officers of cities.
- c. Peace officers of the department of public safety.
- d. Special security officers employed by a board of regents institution as identified in Iowa Code section 262.13.
- e. Peace officers as authorized by Iowa Code section 350.5 or 456A.13.
- f. Employees of the department of transportation who are designated “peace officers” by resolution of the department under Iowa Code section 321.477.
- g. Correctional officers, including parole and probation officers.
- h. County and state prosecutors.
- i. An employee of the department of human services having jurisdiction to investigate the incident.
- j. A magistrate or judge of the Iowa court system.

9.29(2) Elements of a report. A victim is considered to have made a report to law enforcement when the victim has provided a true and accurate report of the incident, which shall include to the best of the victim’s knowledge:

- a. The nature of the crime,
- b. The location of the crime,
- c. The name, whereabouts and description of the suspect, if known, and
- d. The names of witnesses, if known.

9.29(3) Law enforcement record. A law enforcement trip record may satisfy the requirement that the crime be reported to law enforcement.

9.29(4) Good cause. In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim’s age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim may be considered.

9.29(5) Child victim. If the victim is a child as defined in Iowa Code section 232.2 and is reported to be a victim of child abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(6) Dependent adult victim. If the victim is a dependent adult as defined in Iowa Code section 235B.2(4) and is reported to be a victim of dependent adult abuse, the department finds there is good cause to waive the 72-hour reporting requirement.

9.29(7) Sexual abuse victim. For a victim of sexual abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a sexual abuse evidentiary examination was completed within 72 hours of the crime and the victim files a subsequent law enforcement report.

9.29(8) Domestic abuse victim. For a victim of domestic abuse, the department finds there is good cause to waive the 72-hour reporting requirement if a pro se protection order pursuant to Iowa Code chapter 236 is entered by the court and the victim files a subsequent law enforcement report.

ATTORNEY GENERAL[61](cont'd)

9.29(9) Sexually violent predator. For a victim of sexual abuse, the department finds good cause to waive the 72-hour reporting requirement when the perpetrator is referred pursuant to Iowa Code chapter 229A.

61—9.30(915) Cooperation with law enforcement. To be eligible for compensation, the victim of crime must cooperate with the reasonable requests of law enforcement.

9.30(1) Reasonable cooperation. Reasonable cooperation by the victim may include, but is not limited to, the following:

a. Providing law enforcement with a true and accurate report of the crime.

b. Participating in the investigation of the crime to assist law enforcement in the identification of a suspect as requested including the review of photographs, composites, and line-ups.

c. Participating in prosecution procedures including deposition and trial testimony as requested.

9.30(2) Determination of cooperation. In determining whether a victim reasonably cooperated with law enforcement, the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.30(3) Polygraph testing. In determining whether a victim reasonably cooperated with law enforcement, the refusal of a victim to undergo a polygraph examination shall not be the basis of denial.

9.30(4) Sexual abuse victim. A victim of sexual abuse shall be deemed to have reasonably cooperated with law enforcement if the victim undergoes a sexual abuse evidentiary examination.

9.30(5) Domestic abuse victim. A victim of domestic abuse shall be deemed to have reasonably cooperated with law enforcement if a report of the crime was made to law enforcement.

61—9.31(915) Contributory conduct. The division shall reduce or disqualify compensation when there is a causal relationship between the contributory conduct on the part of the victim and the victim's injury or death. Contributory conduct includes consent, provocation, or incitement of the crime on the part of the victim.

9.31(1) Consent, provocation, and incitement. In assessing consent, provocation or incitement on the part of the victim pursuant to Iowa Code section 915.87(2)"a," the division may consider factors including, but not limited to, the following:

a. Whether charges are filed against the suspect;

b. Whether the victim attempted to withdraw from the incident;

c. Comparable or reasonable force on the part of the suspect in response to an action of the victim;

d. The amount of time from the beginning of the interaction between the victim and the suspect and the criminal act committed by the suspect;

e. The age of the victim; and

f. Comparable size or strength of the victim and suspect.

9.31(2) Additional assessment of consent. In assessing the causal nature of consent pursuant to Iowa Code section 915.87(2)"a," the division may consider the victim's age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well-being of the victim.

9.31(3) Consent in intoxicated driving cases. A victim who was the passenger in the vehicle of a driver who has

been determined to have been legally intoxicated at the time of the crash shall not be automatically denied eligibility for compensation. The division may consider whether the victim could have reasonably known the intoxication level of the driver, the driver's behavior or judgment appeared impaired, the victim encouraged or discouraged the driver from driving, or the victim's judgment was impaired.

9.31(4) Additional assessment of provocation and incitement. In assessing the causal nature of provocation or incitement pursuant to Iowa Code section 915.87(2)"a," the division may consider law enforcement documentation that indicates:

a. Retaliatory action. The crime was committed as retaliation for a prior physical assault or injury committed by the victim against the perpetrator, and the victim could have reasonably foreseen the likelihood of retaliation.

b. Gang action. The crime was a direct result of gang activity, including gang initiation, or was inflicted as retaliation for prior gang activity in which the victim participated in a criminal street gang as defined in Iowa Code section 723A.1(2).

c. Mutual combat. The crime was an incident of mutual combat if the victim:

(1) Initiated a physical altercation;

(2) Made a credible threat of bodily harm against the person, took action to indicate the intent to carry out the threat and a physical altercation immediately followed; or

(3) Accepted a verbal challenge to engage in a physical altercation, took action to indicate acceptance of the challenge and a physical altercation immediately followed.

d. Exception to mutual combat. Incitement and provocation are not present in an incident of mutual combat when a significant escalation of the fight, such as the introduction of a deadly weapon, is made by a person other than the victim or when a third party becomes involved resulting in more serious injury than the victim could have reasonably expected.

9.31(5) Victim's criminal act. Contributory conduct includes assisting in, attempting, or committing a criminal act by the victim. A causal relationship must be documented between the injury or death for which compensation is sought and the criminal act of the victim.

61—9.32(915) Eligibility for compensation. The program shall determine the eligibility of an application for compensation.

9.32(1) Determination of eligibility. A denial of eligibility shall be based on written documentation that an application does not satisfy the requirements of Iowa Code chapter 915. An applicant shall be deemed eligible for compensation if the division has not obtained written documentation supporting a denial within six months of the date of the application. Notwithstanding the foregoing, the division may extend the determination of eligibility beyond six months if a court date or grand jury hearing is pending and is reasonably expected to result in information necessary to render an eligibility decision.

9.32(2) Reopening applications. Pursuant to Iowa Code section 915.83(2), the department may reopen and reinvestigate an application if the department determines that the decision was incorrect or incomplete. A denied application may be reopened and reinvestigated if it is discovered through a criminal trial or other investigatory source that the information relied upon for the denial decision was incorrect or incomplete. The eligibility of an approved application will be reopened for consideration if information is discovered through a criminal trial or other investigatory source that indicates that there is reason to deny the application.

ATTORNEY GENERAL[61](cont'd)

The reopening of a denied or approved case is at the discretion of the administrator for the compensation program.

9.32(3) Withdrawal of application. An applicant may withdraw the application for compensation from consideration.

9.32(4) Maximum compensation. Compensation shall be reduced or disqualified to the extent that the maximum compensation allowable pursuant to Iowa Code chapter 915 and these rules has been awarded.

61—9.33(915) Emergency award of compensation. Emergency awards of compensation may be made if the applicant has incurred a loss of income or pecuniary loss as a direct result of the crime.

9.33(1) Preliminary eligibility determination. The program must determine that the application is likely to be eligible based on documentation available including, at minimum, the law enforcement verification form provided to law enforcement by the program.

9.33(2) Documentation. To make an emergency award of compensation, the program must have documentation of the lost wages or the pecuniary loss.

9.33(3) Emergency award decision. A decision denying an emergency award shall not be appealable.

9.33(4) Offset. Any emergency award shall be deducted from the final award of compensation made to the claimant.

61—9.34(915) Computation of compensation. The division shall determine the amount of compensation to be awarded to an eligible applicant.

9.34(1) Benefit limits. Compensation shall be made up to the benefit category limits in effect on the date the application is filed. For an eligible victim of sexual abuse when the offender has been referred pursuant to Iowa Code chapter 229A, compensation shall be paid for expenses incurred after referral of the offender.

9.34(2) Payer-of-last-resort. The program is a payer-of-last-resort pursuant to federal law 42 U.S.C. 10602(1403). Compensation shall not be paid for services when the provision for those services is mandated by law or administrative rule to be the responsibility of another governmental unit, private agency or program. Payments shall be reduced by payments made by offenders and third parties responsible for the damages of the crime.

9.34(3) Voluntary financial programs. Compensation applicants will be encouraged to apply for other financial assistance programs to pay costs resulting from the crime-related injury. However, no applicant will be denied compensation benefits based on the applicant's refusal to seek funds from a voluntary financial assistance program.

9.34(4) Insurance providers. Eligible victims and claimants must give service providers the information necessary to bill insurance providers for crime-related treatment. Payment of compensation will not be made if the victim refuses or fails to provide information requested by the service or insurance provider or sign the required assignment of benefits within a reasonable time frame.

9.34(5) Supplanting of funds prohibited. Compensation shall be made only when the claimant is responsible for the cost of crime-related injury. Compensation shall not be paid when a government entity, including but not limited to a mental health facility, jail, or prison, is responsible for the costs of treatment for injury from crime.

61—9.35(915) Computation of benefit categories. The division shall determine the amount of compensation to be awarded to an eligible applicant for injury from crime for each benefit category pursuant to Iowa Code section 985.86.

9.35(1) Medical care. Compensation may be paid for the reasonable expenses of medical care provided to eligible crime victims by, or under the supervision of, a person licensed by the state under Iowa Code chapter 147, 148, 148A, 148E, 149, 150A, 151, 152C, or 153. When preexisting medical conditions are treated during crime-related medical care, the program may reduce payment to a percentage equal to the portion of the medical care determined to be directly related to the compensable crime. Medical care expenses include the following:

a. Medical care sanctioned by sovereign nations and tribes. Compensation may be paid for medical care rendered in accordance with a method of healing sanctioned by a federally recognized sovereign nation or tribe.

b. Medical counseling costs. Compensation may be paid for counseling provided under the direct supervision of a psychiatrist or other physician and shall be applied toward the medical benefit maximum.

c. Medical care for homicide victim survivors. Compensation may be paid to the spouse, child, parent, sibling, or person related by blood or affinity to a homicide victim for the same types of medical care which are allowable for primary victims, including but not limited to hospital and physician care, psychiatric care, prescriptions, and transportation expenses related to injury from the crime.

d. Medical equipment and property alteration. Compensation may be paid for equipment and property alteration which are prescribed as medically necessary care due to injury from the crime.

e. Medical supplies. Compensation may be paid for medical care supplies and incidental supplies necessary for medical care due to injury from the crime.

f. Medical care for pregnancy. Compensation may be paid for medical care costs related to pregnancy resulting from the crime of sexual abuse. Eligible expenses for care of the victim shall be paid. Expenses incurred for care of a newborn child are not compensable.

g. Medical devices. Compensation may be paid for the replacement of a medical device including but not limited to a sight or hearing device, dentures, prosthetic device, wheelchair, and medication that was taken, lost or destroyed during the crime.

h. Transportation for medical emergency. Compensation may be paid for the reasonable cost of transportation in a medical emergency by private vehicle at the rate of 25 cents per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation. Transportation within a city limits will be based on the program's estimate of mileage from the location of the injured victim to the medical facility.

i. Transportation for nonemergency care. Compensation may be paid for the cost of transportation by commercial vehicle or by private car for nonemergency medical care and counseling received outside of the victim's county of residence. Transportation provided by private vehicle for non-emergency care will be reimbursed at the rate of 25 cents per mile. Mileage will be based on mileage calculation from the most current map published by the department of transportation.

j. Transportation medical benefit. Compensation may be paid for transportation from the applicable medical care or counseling benefit category. The available funds to the victim from the applicable benefit category will be reduced by the amount of compensation paid for transportation.

k. Health insurance. Compensation may be paid for premiums to continue a health insurance policy that was pro-

ATTORNEY GENERAL[61](cont'd)

vided in whole or in part by the victim's employer prior to the crime and the employment ceased as a result of the crime.

9.35(2) Medical care records. When compensation for medical care is requested, the provider shall submit medical records that document the care provided and show that the medical care is for injury from crime.

9.35(3) Mental health counseling. Compensation may be paid for the reasonable costs of mental health counseling for eligible crime victims and survivors of a homicide victim. When preexisting mental health issues are addressed during crime-related counseling, the program may reduce payment to a percentage equal to the portion of the counseling determined to be directly related to the compensable crime. The mental health counseling provider shall submit a vitae establishing the provider's educational qualifications for compensation. A provider who is required to be licensed under Iowa law must provide proof of licensure and good standing with the professional licensing board. Compensation shall be paid for mental health counseling provided by the following:

a. Master's level counselor. Compensation may be paid for mental health counseling provided by a person holding at least a master's degree in a mental health or counseling field including but not limited to social work, psychology, guidance and counseling, behavioral sciences, art therapy, marriage and family therapy, child life therapy, and advanced mental health registered nursing.

b. Supervised mental health counselor. Compensation may be paid for mental health counseling provided by a counselor who does not have a master's degree but is under the supervision of a counselor with a master's degree. The supervising mental health counselor must sign the session notes which must be submitted for review by the program.

c. Intern mental health counselors. Compensation may be paid for mental health counseling provided by an intern candidate for a master's degree when the counseling is provided within a course of professional education and the intern is supervised by a provider eligible for compensation.

d. Out-of-state providers. Compensation may be paid to mental health counselors outside Iowa who provide services to victims of crime eligible for the Iowa program if the mental health counselor meets the professional licensure criteria of the state in which the counselor works.

9.35(4) Mental health counseling records. When compensation for mental health counseling is requested, the provider shall complete verification forms related to the counseling as follows:

a. Treatment plan and certification form. Information submitted on the treatment plan and certification form shall include, but not be limited to, a summary of the initial evaluation, any preexisting mental health diagnoses currently being treated, current diagnoses, issues addressed, counseling goals, expected length of counseling services, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

b. Treatment progress and certification form. At six-month intervals for the duration of the crime-related mental health counseling, the provider will submit a treatment progress and certification form. Information on the form shall include progress on previously stated goals of counseling, current goals, current diagnosis, expected length of additional counseling, and certification of the percentage of mental health counseling directly related to issues arising from the victimization.

c. Session notes. The program may require submission of session notes to determine if the mental health counseling is directly related to the crime when:

(1) The counseling expenses for a victim exceed \$3,000.

(2) The provider has not completed the treatment and certification plan with statement of the percentage of treatment directly related to the crime.

(3) The counseling begins, or is provided, more than one year after the crime.

(4) The treatment plan or progress summary indicates that the victim is receiving treatment for a diagnosis or issue not exacerbated by the crime.

9.35(5) Victim service counseling. Reasonable charges for counseling provided by a victim counselor as defined in Iowa Code sections 236A.1 and 915.20A, when fees for services to the general public for services of a similar nature have not previously been established, may be paid within the following guidelines:

a. Counselors funded with VOCA. Counseling provided by victim counselors whose position is funded, in whole or in part, or whose position is used as match requirement for federal Victims of Crime Act funds shall not be eligible for compensation payment.

b. Computation of victim service counseling expenses. Counseling services provided to an eligible victim by a victim counselor may be compensated as follows:

(1) Individual counseling at an hourly rate of \$35.

(2) Group counseling at an hourly rate of \$20.

c. Compensation paid, combined with other funding sources for the service, shall not be in excess of the total cost of providing the counseling hour.

9.35(6) Victim service counseling records. A record of each counseling session shall be maintained in the victim's file including the date of service, the length of service, the name of the victim counselor who provided the service, the general topics addressed, and referrals made.

9.35(7) Counseling with the perpetrator. Compensation for mental health or victim service counseling that includes the perpetrator of the crime may be payable when the perpetrator takes part only to take responsibility for the crime and apologize to the victim and the victim is allowed to confront the perpetrator regarding the effects of the crime.

9.35(8) Family counseling. Compensation for family mental health or victim service counseling may be paid only for sessions where the victim is present and the focus of the session is to assist the victim in recovery from a compensable crime.

9.35(9) Lost wages or income. Compensation may be paid for reasonable lost wages or income when an eligible crime victim is unable to work as the result of injury from crime or as a result of cooperation with the investigation or prosecution of the crime. Lost wages or income due to crime is determined as follows:

a. Gross wages computed. Lost wages are computed as the gross rate of pay times the number of scheduled hours of work missed.

b. Variable income. Income that is variable shall be computed based on the average income earned during a minimum 28-day period within the three months preceding the crime. Estimated earnings not supported by past income statements shall not be accepted.

c. Self-employment and small business income. Self-employed persons or small business employees must provide federal or state income tax forms for the most recent year completed or verification of average income for a minimum of the past six months. Work estimates, labor contracts, and

ATTORNEY GENERAL[61](cont'd)

affidavits from individual employers may be used to establish wages.

d. Vacation, sick, holiday and annual leave. Lost wages or income paid shall not be reduced by vacation, sick, holiday, or annual leave available or used by the victim due to the crime.

9.35(10) Lost wages or income due to disability. Compensation shall be paid for lost wages incurred by an eligible crime victim within two weeks after injury from crime or an eligible survivor of a homicide victim for up to five days within two weeks after the death of a victim without an authorized disability statement. Compensation for lost wages may be paid to the spouse, child, or parent of the homicide victim for up to one month without a disability statement as determined reasonable by the program. A victim or survivor of a homicide victim seeking lost wages for a longer period of time shall submit a disability statement from a licensed physician. Compensation shall be made for lost wages under the following circumstances:

a. Victim injured. Compensation may be paid when the victim cannot work due to injury from crime.

b. Lost hire income. Compensation may be paid when the victim has been hired by an employer but is unable to begin employment because of injury due to the crime, until medically released to work. Required documentation includes a signed affidavit by the employer.

c. Employment terminated. Compensation may be paid when the victim is terminated from employment as a result of crime-related injuries, until medically released to seek work.

d. Unemployment eligible. Compensation may be paid for the difference between the victim's gross wage and the unemployment benefit when the victim is terminated from employment because of injury from crime and is found to be eligible for unemployment benefits.

e. Unemployment ineligible. Compensation may be paid for the amount of the victim's unemployment benefit when the victim is rendered ineligible for unemployment benefits because of injury from the crime, until the victim is medically released to work.

f. Worker compensation benefit eligible. Compensation may be paid for the difference between the victim's gross wage and the worker compensation benefit when the victim is unable to work because of injury from crime and is found to be eligible for worker compensation benefits.

g. Medical and counseling appointments. Compensation may be paid to a primary victim, the parent or guardian of a minor aged primary victim, or the caretaker of a dependent adult primary victim for wages lost due to medical care or counseling appointments for the victim.

9.35(11) Lost wages or income during investigation and prosecution. Compensation may be paid for lost wages incurred by an eligible primary victim, survivor of a homicide victim as described in Iowa Code section 915.86(8), parent or guardian of a minor aged primary victim, or caretaker of a dependent primary victim while cooperating with the investigation and prosecution of the crime including, but not limited to, participation at identification sessions, arraignment, deposition, plea agreement meetings, trial, sentencing, parole and probation hearings, and sexually violent predator civil commitment proceedings.

9.35(12) Residential crime scene cleanup. Compensation may be paid for the reasonable costs of an eligible victim or applicant for cleaning a residential crime scene. Cleaning a residential crime scene means to remove, or attempt to remove, from the crime scene blood, dirt, stains, or other debris

caused by the crime or the processing of the crime scene. Compensation shall be paid for the reasonable out-of-pocket cost of cleaning supplies, equipment rental, labor, and the replacement value of property held for evidentiary purposes.

9.35(13) Loss of support. Compensation for loss of support may be paid for the dependents of an eligible homicide victim or of a victim disabled for a period of 60 days or more when the applicant documents that the dependent relied on the victim wholly or partially for physical care or financial support.

a. Period of dependency. Compensation may be paid for loss of support for the remaining period of dependency, up to the limits established in Iowa Code section 915.86(5), in an amount equal to the lost wages or income the victim was earning at the time of death or disability. The amount of compensation shall be subject to reduction by the amount of collateral sources designated as support pursuant to Iowa Code section 915.87(1).

b. Dependent care. Compensation may be paid for loss of support at the current hourly rate of the Iowa minimum wage for dependent care provided by a person other than the victim if the victim was providing physical care to the dependent at the time of the crime.

9.35(14) Clothing and bedding. Compensation may be paid for clothing and bedding held as evidence by law enforcement and not returned to the victim. Compensation shall not be made for the clothing of a deceased victim which is held as evidence.

9.35(15) Funeral and burial expenses. Compensation may be paid for reasonable expenses incurred for the funeral and burial or cremation for an eligible crime victim. The following expenses may be paid up to the maximum expense established in Iowa Code section 915.86(4):

a. Funeral service. Compensation may be paid for expenses related to funeral and burial or cremation preparation and services.

b. Burial plot and vessel. Compensation may be paid for the cost of a burial plot, vault, casket, urn, or other permissible vessel.

c. Burial effects. Compensation may be paid for miscellaneous funeral and burial expenses including, but not limited to, flowers, burial clothing for the victim, transportation of the victim's body, and travel and lodging expenses for survivors of the homicide victim as described in Iowa Code section 915.87(8) with priority for the surviving spouse, children, and parents of the victim. Documentation must be provided for all miscellaneous funeral and burial expenses.

61—9.36(915) Appeal of compensation decisions. An applicant shall be informed in writing of the basis for the denial of eligibility or the amount of an award.

9.36(1) Applicant appeal. An applicant may appeal a compensation decision as follows:

a. Appeal to director. An applicant aggrieved by a denial decision or the amount of compensation awarded by the program may appeal to the director.

b. Appeal to board. An applicant may appeal the director's decision to the board.

c. Appeal to district court. An applicant who disagrees with the decision of the board has the right to appeal to the district court within 30 days of receipt of the board's decision.

9.36(2) Director appeal period. An applicant shall submit to the director a written request for reconsideration within 30 days of the date the notice of the crime victim compensation program decision is mailed or otherwise issued by the division. Any request for reconsideration postmarked within the

ATTORNEY GENERAL[61](cont'd)

prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 30 days of the receipt of the request for reconsideration, the director shall issue a decision.

9.36(3) Board appeal period. An applicant may file with the board a request for consideration of the director's decision. This written request for consideration by the board shall be submitted within 30 days of the date the notice of the director's decision is mailed or otherwise issued by the director. Any request for review postmarked within the prescribed time period shall be considered timely filed by the division. Barring any unusual circumstances, within 90 days of the receipt of the request, the board, or a committee designated by the chair of not fewer than five members of the board, shall issue a decision.

These rules are intended to implement Iowa Code sections 915.80 through 915.94.

ARC 0227B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 1, "Departmental Organization and Procedures," appearing in the Iowa Administrative Code.

Iowa Code section 17A.3(1)"a" requires state agencies to adopt as a rule a description of the organization of the agency which states the general course and method of its operations, the administrative subdivisions of the agency, and the programs implemented by each of them.

These proposed amendments add the Division of Policy and Rule Integration to the Department under the Deputy Director for Policy and correct an organizational reference. This Division is established to ensure consistency and integration of all policy and rules across the agency. The Division Administrator also serves as the Rules Administrator for the Department and is responsible for management of Executive Order Number 8 that mandates a review of all of the Department's rules.

This organizational change consolidates the Office of Policy Analysis and the Appeals Section under the new Division. These units were previously supervised directly by the Deputy Director for Policy.

These amendments do not provide for waiver in specified situations because these amendments do nothing more than update the description of the organizational structure.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before November 22, 2000.

These amendments are intended to implement Iowa Code section 17A.3(1).

The following amendments are proposed.

ITEM 1. Amend subrule 1.3(2), introductory paragraphs, as follows:

1.3(2) Deputy director for policy. The deputy director for policy manages the development of the financial, medical and social services programs for eligible Iowans.

The administrators of the divisions of adult, children and family services, economic assistance, medical services, and mental health and developmental disabilities, *and policy and rule integration* report directly to the deputy director for policy. ~~In addition, the office of policy analysis and the appeals unit report directly to the deputy director for policy.~~

Further amend subrule 1.3(2) by adopting the following new paragraph:

e. The administrator of the division of policy and rule integration is responsible for providing leadership and direction agencywide for the integration of policy development and the consistency of rules, including ensuring that program policies are consistent with state and federal law and are designed to achieve programmatic goals and results; monitoring state and federal programmatic policy and financial changes; and identifying policy and rule changes to ensure alignment with program and administrative divisions to facilitate alignment with the department's mission.

ITEM 2. Amend rule 441—1.6(17A), catchwords, as follows:

441—1.6(17A) Mental health and ~~mental retardation developmental disabilities~~ commission.

ARC 0251B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, the Department of Human Services proposes to amend Chapter 52, "Payment," appearing in the Iowa Administrative Code.

This amendment increases the maximum State Supplementary Assistance (SSA) residential care facility (RCF) reimbursement rate. The maximum RCF reimbursement rate will be increased from \$24.50 to \$29.34 per day for the month of November 2000 only. The flat RCF reimbursement rate will not be increased at this time.

The Seventy-eighth General Assembly directed that the Department may take actions to meet the federal pass-along requirement mandated by Title XVI of the Social Security Act, Section 1618, if necessary. These rate increases are necessary to meet the federal pass-along requirements for calendar year 2000.

In order to comply with the federal pass-along requirement in calendar year 2000, Iowa's total SSA expenditures must be at least \$19,575,651. The Department increased the maximum and flat State Supplementary Assistance (SSA) residential care facility (RCF) and in-home health related care (IHHRC) reimbursement rates effective August 1, 2000, to comply with this requirement. However, based on

HUMAN SERVICES DEPARTMENT[441](cont'd)

current projections, the Department projects that calendar year 2000 may still be short of this required spending level. Current projections indicate that a 19.76 percent increase in the maximum RCF reimbursement rate for the month of November is necessary to ensure compliance with the pass-along requirement in calendar year 2000. This spending shortfall is attributable to a lower than projected average cost per bed day for RCF care. This one-month increase will result in additional state expenditures of \$370,298.

This amendment does not provide for waiver in specified situations because it confers a benefit and is required to meet the federal pass-along requirement, as mandated by the legislature.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0231B**. The content of that submission is incorporated by reference.

Consideration will be given to all written data, reviews, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, on or before November 22, 2000.

This amendment is intended to implement Iowa Code sections 249.3(2) and 249.4 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a."

ARC 0228B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4(9), the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 80, "Procedure and Method of Payment," and Chapter 88, "Managed Health Care Providers," appearing in the Iowa Administrative Code.

These amendments provide for Medicaid payment for services currently provided by local school districts and for services provided under the Infants and Toddlers with Disabilities program administered by the Department of Education, Department of Public Health, Department of Human Services, and the Iowa Child Health Specialty Clinics pursuant to an interagency agreement under Subchapter III of the federal Individuals with Disabilities Education Act.

Covered services provided by local school districts include, but are not limited to, audiology services, behavior services, consultation services, medical transportation, nursing services, nutrition services, occupational therapy services, personal assistance, physical therapy services, psychologist services, speech-language services, social work services, vision services, and school-based clinic visit services.

Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not

covered as local education agency services. However, the administration of vaccines is a covered service.

Payment for supplies shall be approved when the supplies are incidental to the child's care, e.g., syringes for injections, and do not exceed \$25 per month. Durable medical equipment and other supplies are not covered as local education agency services.

Payment shall also be approved for local education agency services coordination, subject to certain requirements.

Medicaid coverage for services provided by the local school districts is currently being provided in a number of states. In Iowa the Medicaid program currently covers services provided by the Area Education Agencies. Expansion of Medicaid coverage to services provided by the local school districts will allow the local school districts to access federal funding for the medical services they provide for children and, therefore, expand the services they provide.

The Departments of Education and Public Health have been involved in planning for the expansion of services to the local school districts. The Department of Education will assist with communication to the local school districts. The local school districts will be required to learn the Medicaid reimbursement system and file individual claims for reimbursement for the services.

Covered services provided under the Infants and Toddlers with Disabilities program include, but are not limited to, audiology, psychological evaluation and counseling, health and nursing services, nutrition services, occupational therapy services, physical therapy services, developmental services, speech-language services, vision services, and medical transportation. Payment shall also be approved for infant and toddler coordination services, subject to certain requirements.

Medicaid coverage of the Infant and Toddler program services with a local certified match will allow Iowa to expand the Infants and Toddlers with Disabilities program. The other partners in the program, the Departments of Education and Public Health and the Iowa Child Health Specialty Clinics, in conjunction with the Department of Human Services, will need to provide certification, training, and oversight of the Medicaid regulations for these services.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit through coverage of medical services provided by local school districts and the Infant and Toddler program.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before November 22, 2000.

Oral presentations may be made by persons appearing at the following meeting. Written comments will also be accepted at that time.

Des Moines - November 22, 2000 10 a.m.
Des Moines Regional Office
City View Plaza
Conference Room 104
1200 University
Des Moines, Iowa 50314

Any persons who intend to attend the public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515) 281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend 441—Chapter 77 by adopting the following **new** rules:

441—77.43(249A) Infant and toddler program providers. A public agency provider in good standing under the infants and toddlers with disabilities program administered by the department of education, the department of public health, the department of human services, and the Iowa Child Health Specialty Clinics pursuant to the interagency agreement between these agencies under Subchapter III of the federal Individuals with Disabilities Education Act (IDEA) is eligible to participate in the medical assistance program as a provider of infant and toddler program services under rule 441—78.49(249A) if the following additional requirements are met.

77.43(1) Licensure. Services must be rendered by practitioners who meet any applicable professional licensure requirement, and local education agency and area education agency providers must meet the licensure (certification) requirements of the department of education as set forth at rule 281—41.8(256B,34CFR300).

77.43(2) Documentation requirements. As a condition of participation, the provider shall be responsible for maintaining accurate and current documentation of services provided in the child's record. Documentation of all services performed is required and must include:

- a. Date, time, location, and description of each service provided and identification of the individual rendering the service by name and professional or paraprofessional designation.
- b. An assessment and response to interventions and services.
- c. An individual family service plan (IFSP) including all changes and revisions, as developed by the service coordinator pursuant to rule 281—41.5(256B,34CFR300).
- d. Documentation of progress toward achieving the child's or family's action steps and outcomes as identified in the individual family service plan (IFSP).

441—77.44(249A) Local education agency providers. School districts accredited by the department of education pursuant to 281—Chapter 12 are eligible to participate in the medical assistance program as providers of local education agency (LEA) services under rule 441—78.50(249A) if the following conditions are met.

77.44(1) Compliance with department of education rules and licensure requirements. These providers must comply with requirements under the department of education rules set forth at 281—41.8(256B,34CFR300), 281—41.9(256B,273,34CFR300), and 281—41.10(256B) and board of educational examiners rules at 282—subrules 14.20(5) and (6), and services must be rendered by practitioners who meet any applicable professional licensure requirements.

77.44(2) Documentation requirements. As a condition of participation, the provider shall be responsible for maintaining accurate and current documentation in the child's record. Documentation of all services performed is required and must include:

- a. Date, time, duration, location, and description of each service delivered and identification of the individual rendering the service by name and professional or paraprofessional designation.
- b. An assessment and response to interventions and services.
- c. Progress toward goals in the individual education plan (IEP) or individual health plan (IHP) pursuant to 281—Chapter 41, Division VIII, or 281—subrule 41.96(1).

ITEM 2. Amend 441—Chapter 78 by adopting the following **new** rules:

441—78.49(249A) Infant and toddler program services. Subject to the following subrules, payment shall be made for medical services provided to Medicaid eligible children by infant and toddler program providers under the infants and toddlers with disabilities program administered by the Iowa Child Health Specialty Clinics and the departments of education, public health, and human services.

78.49(1) Covered services. Covered services include, but are not limited to, audiology, psychological evaluation and counseling, health and nursing services, nutrition services, occupational therapy services, physical therapy services, developmental services, speech-language services, vision services, and medical transportation.

78.49(2) Coordination services. Payment shall also be approved for infant and toddler coordination services, subject to the following requirements:

a. Payable coordination services must consist of activities to assist and enable a child and family to receive infant and toddler program services and must serve as the point of contact in assisting parents to obtain the services and assistance needed. This must include, but is not limited to:

- (1) Explaining the infants and toddlers with disabilities program, including parental rights and procedural safeguards.
- (2) Identifying the family's concerns related to the child's needs.
- (3) Coordinating the evaluations and assessments needed by the child.
- (4) Facilitating and participating in the development, review and evaluation of individualized family service plans (IFSP) pursuant to rule 281—41.5(256B,34CFR300). This must include identifying the people to participate in the development of the service plan and face-to-face or telephone contacts with others for the purpose of developing, reviewing, and revising the IFSP.
- (5) Assisting parents in gaining access to the infant and toddler program services and other services identified in the IFSP. This must include face-to-face or telephone contacts with the child and family for the purpose of assessing or reassessing needs.

(6) Assisting families in identifying available service providers and funding resources. This must include documentation of unmet needs and gaps in services.

(7) Coordinating and monitoring the delivery of services, informing families of the availability of advocacy services, coordinating with medical and health providers, and periodic observation of services to ensure that quality services are being provided and are effectively meeting the needs of the child.

(8) Facilitating the timely delivery of services.

(9) Continuously seeking the appropriate services for the duration of the child's eligibility.

(10) Arranging or authorizing payment for medical transportation.

(11) Keeping records, including preparing reports, updating service plans, making notes about IFSP activities in the recipient's record, and preparing and responding to correspondence with the child, family, and others.

b. A minimum of one face-to-face contact per month between the service coordinator and the child and family is required for payment of infant and toddler coordination services.

78.49(3) Child's eligibility. Payable services must be provided to a child under the age of 36 months who is experi-

HUMAN SERVICES DEPARTMENT[441](cont'd)

encing developmental delay or who has a condition that is known to have a high probability of resulting in developmental delay at a later date.

78.49(4) Delivery of services. Services must be delivered directly by the infant and toddler program provider or by a practitioner under contract with the infant and toddler program provider.

78.49(5) Remission of nonfederal share of costs. Payment for services shall be made only when the following conditions are met:

a. The responsible infant and toddler program provider has entered into an agreement with the department certifying that the nonfederal share of the cost is available within funds allocated for the infants and toddlers with disabilities program.

b. The infant and toddler program provider has executed an agreement to remit the nonfederal share of the cost to the department.

c. The infant and toddler program provider has certified that the funds remitted for the nonfederal share of the costs of the services are not federal funds and are unrestricted public funds available for match pursuant to 42 CFR 433.51 as amended January 26, 1993.

441—78.50(249A) Local education agency services. Subject to the following subrules, payment shall be made for medical services provided by local education agency providers to Medicaid-eligible individuals under the age of 23.

78.50(1) Covered services. Covered services include, but are not limited to, audiology services, behavior services, consultation services, medical transportation, nursing services, nutrition services, occupational therapy services, personal assistance, physical therapy services, psychologist services, speech-language services, social work services, vision services, and school-based clinic visit services.

Vaccines available through the Vaccines for Children program under Section 1928 of the Social Security Act are not covered as local education agency services. However, the administration of vaccines is a covered service.

Payment for supplies shall be approved when the supplies are incidental to the patient's care, e.g., syringes for injections, and do not exceed \$25 per month. Durable medical equipment and other supplies are not covered as local education agency services.

78.50(2) Coordination services. Payment shall also be approved for local education agency services coordination, subject to the following requirements:

a. Service coordination must consist of activities to assist and enable a child to receive local education agency services and must serve as the point of contact in assisting parents to obtain the services and assistance needed. This must include, but is not limited to:

(1) Coordinating the evaluations and assessments needed by the child.

(2) Facilitating and participating in the development and review of the initial and annual individual education plan (IEP) or individual health plan (IHP) pursuant to 281—Chapter 41, Division VIII, or 281—subrule 41.96(1).

(3) Conducting triennial reviews.

(4) Providing ongoing service coordination.

(5) Facilitating the timely delivery of needed services.

(6) Keeping records, including preparing reports, updating service plans, making notes about IEP/IHP activities in the child's record and maintaining face-to-face contact as required in 78.50(2)"b."

b. A minimum of one face-to-face contact per quarter between the service coordinator and the child and family is

required for payment of local education agency coordination services.

78.50(3) Delivery of services. Services must be delivered directly by the local education agency providers or by a practitioner under contract with the local education agency provider.

78.50(4) Remission of nonfederal share of costs. Payment for services shall be made only when the following conditions are met:

a. The responsible local education agency has entered into an agreement with the department certifying that the nonfederal share of the cost is available within funds allocated for the local education agency program.

b. The local education agency has executed an agreement to remit the nonfederal share of the cost to the department.

c. The local education agency has certified that the funds remitted for the nonfederal share of the costs of the services are not federal funds.

ITEM 3. Amend subrule **79.1(2)** by adopting the following **new** basis of reimbursement provider categories in alphabetical order:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Infant and toddler program providers	Fee schedule	Fee schedule
Local education agency	Fee schedule	Fee schedule

ITEM 4. Amend subrule **80.2(2)** by adopting the following **new** paragraphs "aq" and "ar":

aq. Infant and toddler program providers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

ar. Local education agency providers shall submit claims on Form HCFA-1500, Health Insurance Claim Form.

ITEM 5. Amend subrule **88.5(3)** by adopting the following **new** paragraphs "j" and "k":

j. Infant and toddler program services.

k. Local education agency services.

ARC 0240B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

This proposed amendment updates the license definition list by eliminating some licenses which are no longer offered and including those licenses which were not included previously. The Electronic Licensing Committee of the Department requested this amendment.

NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written suggestions or comments on the proposed amendment on or before November 21, 2000. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on November 22, 2000, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 483A.27.

The following amendment is proposed.

Rescind subrule 15.1(1) and adopt in lieu thereof the following **new** subrule:

15.1(1) Definitions. For the purposes of Iowa Code chapter 483A, the following definitions are used:

Hunting license. A hunting license is defined as the following licenses in Iowa Code section 483A.1.

1. Hunting licenses—legal residents except as otherwise provided. (Section 483A.1(2)“a”)

2. Hunting licenses—nonresidents’ hunting license. (Section 483A.1(2)“d”)

3. Hunting preserve license.

4. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as defined in Iowa Code section 483A.24(14).

5. Veteran’s lifetime hunting and fishing license as defined in Iowa Code section 483A.24(13).

License seller. License seller means a retail business establishment, an office of a government entity, or a nonprofit corporation designated by the director to issue licenses to the public. For the purposes of Chapter 15, “license sellers” shall be synonymous with “depositories” as used in Iowa Code chapter 483A.

ARC 0239B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 23, “Wildlife

Habitat Promotion with Local Entities Program,” Iowa Administrative Code.

These amendments are intended to refine the grant review process by clarifying project eligibility and by slightly modifying the application rating system.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 22, 2000. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515) 281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on November 22, 2000, at 10 a.m. in the Fifth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 483A.3.

The following amendments are proposed.

ITEM 1. Amend rule 571—23.5(483A), introductory paragraph, as follows:

571—23.5(483A) Eligibility for cost-sharing assistance. No project shall be eligible for cost sharing unless it is specifically approved by the commission, or the applicant has received a written waiver of retroactivity from the ~~commission~~ *director*, prior to its initiation. A project shall not be eligible for cost sharing unless public hunting and trapping will be allowed; however, the review and selection committee may recommend for commission approval projects with restrictions on hunting and trapping under exceptional circumstances, ~~like~~ *such as* waterfowl refuges. Only the following types of project expenditures will be eligible for cost-sharing assistance.

ITEM 2. Amend subrule 23.6(2) as follows:

23.6(2) Time of submission. Applications for funds shall be reviewed and selected for funding during January and July of each year. Applications must be received in acceptable form by the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, by the close of business on the last business day of May for consideration at the ~~July~~ *summer* review and the last business day of November for the ~~January~~ *winter* review. Upon timely notice to eligible recipients, additional selection periods may be scheduled if necessary to expedite the distribution of these funds. In emergencies, local entities can obtain a waiver so that acquisition projects may be approved for retroactive payments, provided that funds are available and the project meets all other criteria.

ITEM 3. Amend subrule 23.7(3) as follows:

23.7(3) Application rating system. The committee will apply a numerical rating system to each grant application which is considered for fund assistance. The following criteria, with a weight factor for each, will be considered:

Wildlife habitat needs	2
Existing or potential habitat quality	3

NATURAL RESOURCE COMMISSION[571](cont'd)

Cost effectiveness	2 1
Species diversity	1

Each criterion will be given a score of from 1 to 10 which is then multiplied by the weight factor. Three additional criteria will be considered in the rating system:

a. to c. No change.

All points will be totaled for each application and those applications receiving the highest scores will be selected for fund assistance to the extent of the allotment for each semi-annual period, except that any project scoring a total of not more than 50 45 points will not be funded.

ARC 0238B

PERSONNEL DEPARTMENT[581]

**Notice of Termination
and
Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 19A.9 and 97B.15, the Department of Personnel gives Notice of Intended Action to adopt new Chapter 33, “Uniform Rules for Waivers,” Iowa Administrative Code.

On January 7, 2000, the Department commenced a rule making to receive public comment on the proposed adoption of waiver rules. Notice of Intended Action was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9626A**. The proposed waiver rules contained criteria for granting waivers based on Governor Vilsack’s Executive Order Number 11. The Department did not receive any comments on its proposed waiver rules.

Subsequent to the Department’s submittal of its proposed waiver rules, the Legislature passed 2000 Iowa Acts, House File 2206, and the Governor signed the bill. The bill sets statutory criteria for granting waivers that are different from those in Executive Order Number 11 and the Department’s proposed rules. Given the level of activity in the Legislature, the changed criteria, and the passage of time, the Department deems it best to terminate its initial rule making and to initiate a new one. Therefore, pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Department terminates the rule making initiated on January 7, 2000, and published as **ARC 9626A**.

The Department’s new rule making is intended to implement 2000 Iowa Acts, House File 2206, and Executive Order Number 11, insofar as the Executive Order conforms to 2000 Iowa Acts, House File 2206.

The new legislation contains criteria that agencies must use when deciding whether or not to grant a waiver request. The Department has included the statutory criteria in its proposed waiver rules with slight modifications. In addition, the Department does not believe there is a difference between a “waiver” and a “variance” and has therefore eliminated the reference to “variance” in its criteria.

The Department has also omitted from its proposed waiver rules those portions of the uniform waiver rule that are not applicable to the Department’s processes and are unnecessary or are not responsive to the Department’s needs. There-

fore, the Department has modified the uniform waiver rule in several respects.

Any interested person may present written comments, data, views, and arguments on the proposed chapter not later than November 21, 2000. Such written comments should be sent to Michael Prey, Department of Personnel, East 14th and Grand Avenue, Des Moines, Iowa 50319-0150, or to Kelly Lovell, Iowa Public Employees’ Retirement System (IPERS), P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact Michael Prey at (515)281-4168 or Kelly Lovell at (515) 281-0089.

There will be a public hearing on November 21, 2000, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the proposed chapter.

These rules are intended to implement Iowa Code chapters 17A, 19A and 97B and 2000 Iowa Acts, House File 2206.

The following new chapter is proposed.

CHAPTER 33

UNIFORM RULES FOR WAIVERS

581—33.1(17A,19A,97B) Applicability. This chapter outlines a uniform process for the granting of waivers from rules adopted by the department.

33.1(1) Department authority. A waiver from rules adopted by the department may be granted in accordance with this rule if:

- a. The department has exclusive rule-making authority to promulgate the rule from which waiver is requested or has final decision-making authority over a contested case in which a waiver is requested; and
- b. No statute or rule otherwise controls the grant of a waiver from the rule for which waiver is requested.

33.1(2) Interpretive rules. This chapter shall not apply to rules that merely define the meaning of a statute or other provisions of law or precedent if the department does not possess delegated authority to bind the courts to any extent with its definition.

33.1(3) Compliance with statute. No waiver may be granted from a requirement that is imposed by statute. Any waiver must be consistent with statute.

581—33.2(17A,19A,97B) Criteria for waiver. The department may issue an order granting a waiver, as applied to the circumstances of a specified person, if the petitioner establishes by clear and convincing evidence that:

- 1. Application of the rule to that person would result in hardship or injustice; and
- 2. Granting the waiver on the basis of the particular circumstances of that specified person would be consistent with the public interest; and
- 3. Granting the waiver in that case would not prejudice the substantial legal rights of any other person.

In determining whether a waiver would be consistent with the public interest under paragraph “2,” the department shall consider whether, if the waiver is granted, the public interest will be protected by other means that are substantially equivalent to full compliance with the rule.

33.2(1) The department may condition the grant of a proposed waiver on such reasonable conditions as are appropriate to achieve the objectives of the particular rule in question through alternative means.

PERSONNEL DEPARTMENT[581](cont'd)

33.2(2) This rule shall not preclude the department from granting waivers in other contexts or on the basis of other standards if the department deems it appropriate to do so and is not prohibited by state or federal statute, federal regulations, this rule, or any other rule adopted under Iowa Code chapter 17A from issuing such waivers.

33.2(3) The inadvertent granting of a waiver by the department shall not be deemed to be a waiver to which the provisions of this rule apply but, depending on the facts and circumstances, the department may limit enforcement of the affected rule(s) on a prospective basis.

33.2(4) The petitioner shall bear the burden of persuasion when a petition for waiver from a department rule is filed.

33.2(5) When the rule from which a waiver is sought establishes administrative deadlines, the department shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

581—33.3(17A,19A,97B) Filing of petition. Any person may file a petition with the department requesting a waiver, in whole or in part, of a rule of the department on the grounds that the application of the rule to the particular circumstances of that person would qualify for a waiver.

A petition for a waiver must be submitted in writing to the administrative rules coordinator of the division of the department having jurisdiction over the particular issue. For IPERS issues, such petitions shall be directed to Administrative Rules Coordinator, Iowa Public Employees' Retirement System, P.O. Box 9117, Des Moines, Iowa 50331-0150. For all other department matters, such petitions shall be directed to Administrative Rules Coordinator, Department of Personnel, East 14th and Grand Avenue, Des Moines, Iowa 50319. If the request relates to a pending contested case, the request shall also be filed in the contested case proceedings. Waiver rulings shall be made by department staff having jurisdiction over the particular issue and having the authority to issue final rulings on appeals regarding such issues, provided that the director shall have final authority with respect to all waiver rulings.

581—33.4(17A,19A,97B) Contents of petition. A petition for waiver does not have to be in a particular format, but must contain the following elements.

1. The name, address, social security number, and telephone number of the petitioner and the name, address, and telephone number of the petitioner's representative, if any.

2. The specific rule or rules for which a waiver is requested.

3. The precise scope and operative period of the waiver requested, including any alternative means or other condition or modification proposed to achieve the purposes of the rule.

4. An explanation of the reasons for the waiver, including all material facts relevant to the waiver in question.

5. A description of any prior contacts between the department and the petitioner relating to the proposed waiver including, but not limited to, a list or description of prior notices, investigative reports, advice, negotiations, consultations or conferences, contested case rulings, and penalties relating to the proposed waiver.

6. The name, address, and telephone number of any person inside or outside of state government who would be adversely affected by or who possesses material information related to the waiver in question.

7. Any information known to the petitioner regarding the department's treatment of similar cases.

8. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

9. Any signed releases required to obtain relevant information from persons with knowledge of such information.

581—33.5(17A,19A,97B) Additional information. Prior to issuing an order granting or denying a petition for waiver, the department may request additional information from the petitioner relating to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and department representatives.

581—33.6(17A,19A,97B) Notices. Within 30 business days after receipt of a petition for waiver of a rule, the department shall give notice of the pendency of the petition and a concise summary of its contents to all persons to whom notice is required by any provision of law. In addition, the department may give notice to other persons.

581—33.7(17A,19A,97B) Intervenors. Persons who qualify as intervenors under any provision of law may intervene in proceedings for waiver of a rule if they file timely petitions for intervention according to department rules governing such intervention.

581—33.8(17A,19A,97B) Hearing procedures. The provisions of 581—Chapter 26 shall apply to proceedings under this chapter if the petition for waiver is filed in a contested case proceeding. Prior to issuing an order granting or denying a proposed waiver, the department shall determine whether or not the facts alleged in the proposed waiver are accurate and complete.

581—33.9(17A,19A,97B) Ruling. An order granting or denying a proposed 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 on which that action is based, and a description of the precise scope (including any conditions) and operative period of the waiver, if one is granted.

33.9(1) Time for ruling. The department shall grant or deny a petition for 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 or the department, specifying good cause, extends this time period with respect to a particular petition for an additional 30 days. However, if a petition for waiver has been filed in a contested case proceeding, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

33.9(2) When deemed denied. Failure of the department to grant or deny a petition for waiver within the required time period shall be deemed a denial of that petition by the department.

33.9(3) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

581—33.10(17A,19A,97B) Defense. After an order granting a waiver is issued, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

PERSONNEL DEPARTMENT[581](cont'd)

581—33.11(17A,19A,97B) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” each division of the department 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 available to members of the public at the offices of the applicable division of the department.

581—33.12(17A,19A,97B) Rules from which the department shall not grant waivers. The department shall not grant waivers from the following rules, except as otherwise indicated in the following list.

1. Rules which implement state or federal law, if the waiver could affect the taxability of pension, tax-sheltered annuity, deferred compensation, or health and dependent care benefits under the Internal Revenue Code and regulations thereunder or the Iowa Code and rules adopted thereunder;

2. Rules which set forth the formulas used to calculate IPERS monthly retirement benefits, actuarial equivalents, dividends, amounts to be credited to supplemental accounts of active members, refunds, death benefits, and service purchase costs;

3. Rules which implement contribution rates set and actuarial assumptions recommended by the Iowa public employees' retirement system's actuary;

4. Rules which limit the release of confidential information;

5. Rules which implement contracts between the department and its vendors (except as permitted in such contracts);

6. Rules governing separations, disciplinary actions and reductions in force under 581—Chapter 11 and grievances and appeals under 581—Chapter 12 (except as permitted by statute and applicable department rules);

7. Rules governing the number of voting members of the IPERS investment board necessary to constitute a quorum and the number of votes necessary to constitute a vote of that board.

581—33.13(17A,19A,97B) Voiding or cancellation. A waiver is void if the material facts upon which the petition is based are not true or if material facts have been withheld or omitted. The department may at any time cancel a waiver upon appropriate notice and hearing if the department finds that the facts as stated in the request are not true, material facts have been withheld or omitted, the alternative means of compliance provided in the waiver have failed to achieve the objectives of the statute, or the petitioner has failed to comply with conditions set forth in the order.

581—33.14(17A,19A,97B) Violations of conditions. Violations of the conditions precedent to a waiver's approval shall be deemed to be violations of the particular rule for which the waiver was granted and will be subject to the same remedies or penalties.

581—33.15(17A,19A,97B) Appeals. Appeals of the department's decisions regarding proposed waivers shall be filed in writing within 30 days after notice of the decision is mailed to the petitioner.

These rules are intended to implement Iowa Code chapters 17A, 19A, and 97B and 2000 Iowa Acts, House File 2206.

ARC 0249B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 220, “Podiatry Examiners,” and adopt new Chapter 222, “Continuing Education for Podiatrists,” Iowa Administrative Code.

The proposed amendments rescind the current continuing education rules; adopt a new license renewal rule; adopt a new chapter for continuing education; renumber the rule regarding discipline; and amend cross references to rules that are no longer in use or are renumbered.

Any interested person may make written comments on the proposed amendments no later than November 21, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division revised these rules in accordance with Executive Order Number 8. The Division sent letters to the public for comment, and five letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on November 21, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 149 and 272C.

The following amendments are proposed.

ITEM 1. Amend rule 645—220.1(147,149), catchwords, as follows:

645—220.1(147,149) Examination and licensure General requirements.

ITEM 2. Adopt **new** subrule 220.1(18) as follows:

220.1(18) A podiatrist may use the prefix “Doctor” but shall add after the person's name the word “Podiatrist” or “DPM.”

ITEM 3. Rescind rule 645—220.7(272C) and adopt the following **new** rule in lieu thereof:

645—220.7(272C) License renewal. The biennial renewal period for a license to practice as a podiatrist shall extend from July 1 of each even-numbered year until June 30 of the next even-numbered year. An application and a continuing education report form for renewal of license to practice as a podiatrist shall be mailed to the licensee at least 60 days prior to the expiration of the license.

1. The licensee shall submit to the board office 30 days before licensure expiration the application and continuing

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

education report form with the renewal fee as specified in 220.3(147).

2. Late renewal. If the renewal fee is received by the board within 30 days after the renewal expiration date, a late fee shall be charged. If the renewal fee is received more than 30 days after the renewal expiration date, the license shall be considered lapsed. Individuals who fail to submit the renewal application and completed documentation of continuing education hours shall be required to pay a late fee.

ITEM 4. Rescind rule **645—220.8(272C)** and renumber rule **645—220.212(272C)** as **645—220.8(272C)**.

ITEM 5. Amend renumbered subrules 220.8(13) and 220.8(14) as follows:

220.8(13) Failure to report to the board as provided in ~~rule 645—220.201(272C)~~ these rules any violation by another licensee of the reasons for disciplinary action as listed in this rule.

220.8(14) Failure to comply with ~~645—220.6(139C)~~ these rules for preventing HIV and HBV transmission.

ITEM 6. Rescind rules **645—220.100(272C)** to **645—220.104(272C)**, **645—220.106(272C)** to **645—220.109(272C)**, and **645—220.200(272C)**.

ITEM 7. Adopt **new** 645—Chapter 222 as follows:

CHAPTER 222

CONTINUING EDUCATION FOR PODIATRISTS

645—222.1(149,272C) Definitions. For the purpose of these rules, the following definitions shall apply:

“Active license” means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

“Administrator” means the administrator of the board of podiatry examiners.

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules.

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

“Board” means the board of podiatry examiners.

“Continuing education” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“Hour of continuing education” means a clock hour spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“Inactive license” means the license of a person who is not engaged in practice in the state of Iowa.

“Lapsed license” means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

“License” means license to practice.

“Licensee” means any person licensed to practice as a podiatrist in the state of Iowa.

645—222.2(149,272C) Continuing education requirements.

222.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1

of each even-numbered year and ending on June 30 of the next even-numbered year. Each biennium, each person who is licensed to practice as a podiatrist in this state shall be required to complete a minimum of 40 hours of continuing education.

222.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium for each subsequent license renewal.

222.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must meet the requirements herein pursuant to statutory provisions and the rules that implement them.

222.2(4) No hours of continuing education shall be carried over into the next biennium.

222.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—222.3(149,272C) Standards for approval.

222.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program, and is accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of the presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

- (1) Date, location, course title, presenter(s);
- (2) Number of program contact hours (One contact hour equals one hour of continuing education credit.); and
- (3) Official signature or verification by program sponsor that includes a brochure, pamphlet, or other means that has a statement of purpose, course objectives, qualifications of speakers, program outline and continuing education hours.

222.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences;

(2) Scientifically oriented material or risk management activities.

b. Maximums per biennium are as follows:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(1) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria in 645—222.3(149,272C).

(2) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;
2. Title of course/program;
3. Number of course/program contact hours; and
4. Official signature or verification of course/program sponsor.

c. No office management courses will be accepted by the board.

d. Continuing medical education credits will not be awarded unless the physician is in physical attendance.

e. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

f. Credit is given only for actual hours attended.

645—222.4(149,272C) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

222.4(1) The information on the form shall include:

- a. Title of continuing education activity;
- b. Date(s);
- c. Sponsor of the activity; and
- d. Number of continuing education hours earned.

222.4(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

- (1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;
- (2) Number of contact hours for program attended;
- (3) Indication of successful completion of course; and
- (4) Copy of official transcript of college courses.

c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All license renewal applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—222.5(149,272C) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. A licensee who has a lapsed license may be subject to audit upon application for reinstatement.

222.5(1) Reinstatement of the lapsed license may be granted by the board if the applicant:

a. Submits a written application for reinstatement to the board;

b. Pays all of the renewal fees then due, to a maximum of five bienniums;

c. Pays all late fees which have been assessed by the board for failure to renew;

d. Pays reinstatement fees; and

e. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 40 by the number of bienniums since the license lapsed.

222.5(2) If the license has lapsed for more than five bienniums, the applicant shall:

a. Complete 200 hours of approved continuing education; or

b. Present verification of full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium that the license has lapsed substantially equivalent in the opinion of the board to that required under these rules; or

c. Successfully complete any or all parts of the national license examination as deemed necessary by the board within one year immediately prior to the submission of such application for reinstatement.

645—222.6(149,272C) Continuing education waiver for active practitioners. A podiatrist licensed to practice shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military services or as a government employee outside the United States as a practicing podiatrist.

645—222.7(149,272C) Continuing education exemption for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa may be granted an exemption of continuing education compliance and obtain a certificate of exemption upon written application to the board. The application shall contain a statement that the applicant will not engage in the practice of podiatry in Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon forms provided by the board. The licensee shall have completed the required continuing education at the time of reinstatement.

645—222.8(149,272C) Continuing education waiver for disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum educational requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor is made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant a waiver of the minimum edu-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

cational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—222.9(149,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of podiatry in the state of Iowa, satisfy the following requirements for reinstatement.

222.9(1) Submit written application for reinstatement to the board upon forms provided by the board with the reinstatement fee.

222.9(2) Furnish in the application evidence of one of the following:

a. The full-time practice of podiatry in another state of the United States or the District of Columbia and completion of continuing education for each year of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Proof of successful completion, with a passing grade, of the Iowa state license examination conducted within one year immediately prior to the submission of the application for reinstatement; or

c. Furnish evidence of completion of 40 hours of approved continuing education per biennium up to a maximum of 200 hours of continuing education.

645—222.10(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 149.

ARC 0246B**PUBLIC HEALTH
DEPARTMENT[641]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2000 Iowa Acts, House File 2565, section 4, the Department of Public Health hereby gives Notice of Intended Action to adopt Chapter 151, "Tobacco Use Prevention and Control Community Partnership Initiative," and Chapter 152, "Tobacco Use Prevention and Control Funding Process," Iowa Administrative Code.

These rules will provide the opportunity for communities to apply for funding to reduce tobacco use at the local level among youth and pregnant women. A party seeking a waiver or variance from the rules should do so pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

The proposed rules were presented to the Department's Tobacco Use Prevention and Control Commission at its October 10, 2000, meeting. No comments were noted. The Commission unanimously adopted the proposed rules at the October 10, 2000, meeting.

The Department of Public Health will hold a public hearing on Tuesday, November 21, 2000, from 1 to 2 p.m. in the Fifth Floor East Conference Room 524, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

Any oral or written comments must be received on or before November 21, 2000. Comments should be addressed to Cathy Callaway, Director, Tobacco Use Prevention and Control Division, Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50309.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 0245B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2000 Iowa Acts, House File 2565.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%
March 1, 2000 — March 31, 2000	8.75%
April 1, 2000 — April 30, 2000	8.50%
May 1, 2000 — May 31, 2000	8.25%
June 1, 2000 — June 30, 2000	8.00%
July 1, 2000 — July 31, 2000	8.50%
August 1, 2000 — August 31, 2000	8.00%
September 1, 2000 — September 30, 2000	8.00%
October 1, 2000 — October 31, 2000	7.75%
November 1, 2000 — November 30, 2000	7.75%

ARC 0244B

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 904.701, the Department of Corrections hereby amends Chapter 37, "Iowa State Industries," Iowa Administrative Code.

This amendment was suggested by the Labor Services Division so that the ten-hour OSHA training could be provided by authorized trainers in the private sector. This amendment will allow greater flexibility for employers providing maintenance or construction services under contract with the Department of Corrections or under the General Services Department. This amendment will also eliminate any inconsistency with Workforce Development/Board Services Division 877—subrule 1.6(4).

In compliance with Iowa Code section 17A.4(2), the Department of Corrections finds that notice and public participation are impracticable due to the brief period between the approval of this amendment and the effective date of rule 201—37.6(904).

The Department of Corrections also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and the amendment made effective upon filing on October 13, 2000, so that the amendment takes effect as soon as possible because rule 201—37.6(904) became effective August 2, 2000. This amendment confers a benefit to the public by allowing more individuals to provide the ten-hour OSHA training to offenders.

The Department of Corrections Board adopted this amendment on October 5, 2000.

This amendment became effective October 13, 2000.

This amendment is intended to implement Iowa Code section 904.701.

The following amendment is adopted.

Rescind subrule 37.6(5) and adopt the following new subrule in lieu thereof:

37.6(5) Safety training. The employer shall document that all offenders employed in construction and maintenance projects receive a ten-hour safety course provided free of charge by the department of workforce development or by a trainer with the appropriate authorization from the Occupational Safety and Health Administration Training Institute.

[Filed Emergency 10/13/00, effective 10/13/00]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0231B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, the Department of Human Services hereby amends Chapter 52, "Payment," appearing in the Iowa Administrative Code.

This amendment increases the maximum State Supplementary Assistance (SSA) residential care facility (RCF) reimbursement rate. The maximum RCF reimbursement rate will be increased from \$24.50 to \$29.34 per day for the month of November 2000 only. The flat RCF reimbursement rate will not be increased at this time.

The Seventy-eighth General Assembly directed that the Department may take actions to meet the federal pass-along requirement mandated by Title XVI of the Social Security Act, Section 1618, if necessary. These rate increases are necessary to meet the federal pass-along requirements for calendar year 2000.

In order to comply with the federal pass-along requirement in calendar year 2000, Iowa's total SSA expenditures must be at least \$19,575,651. The Department increased the maximum and flat State Supplementary Assistance (SSA) residential care facility (RCF) and in-home health related care (IHHRC) reimbursement rates effective August 1, 2000, to comply with this requirement. However, based on current projections, the Department projects that calendar year 2000 may still be short of this required spending level. Current projections indicate that a 19.76 percent increase in the maximum RCF reimbursement rate for the month of November is necessary to ensure compliance with the pass-along requirement in calendar year 2000. This spending shortfall is attributable to a lower than projected average cost per bed day for RCF care. This one-month increase will result in additional state expenditures of \$370,298.

This amendment does not provide for waiver in specified situations because it confers a benefit and is required to meet the federal pass-along requirement, as mandated by the legislature.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because this amendment implements 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44, which authorize the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived and this amendment made effective November 15, 2000, as authorized by 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a," and section 44.

This amendment is also published herein under Notice of Intended Action as **ARC 0251B** to allow for public comment.

The Council on Human Services adopted this amendment October 11, 2000.

This amendment is intended to implement Iowa Code sections 249.3(2) and 249.4 and 2000 Iowa Acts, Senate File 2435, section 13, subsection 2, paragraph "a."

This amendment will become effective November 15, 2000.

The following amendment is adopted.

Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.50 or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~\$24.50~~ **\$29.34 for the month of November 2000 and \$24.50 for each month thereafter.** A cost-related per diem rate shall be established

HUMAN SERVICES DEPARTMENT[441](cont'd)

for each facility choosing this method of payment according to rule 441—54.3(249).

[Filed Emergency 10/11/00, effective 11/15/00]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0245B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of 2000 Iowa Acts, House File 2565, section 4, the Department of Public Health hereby adopts Chapter 151, "Tobacco Use Prevention and Control Community Partnership Initiative," and Chapter 152, "Tobacco Use Prevention and Control Funding Process," Iowa Administrative Code.

These rules apply to community partnerships established under 2000 Iowa Acts, House File 2565, as part of a comprehensive tobacco use prevention and control initiative to reduce tobacco use by youth and pregnant women, to promote compliance by minors and retailers with tobacco sales laws and ordinances, to enhance the capacity of youth to make healthy choices and to foster a social and legal climate in which tobacco use becomes undesirable and unacceptable.

The rules also outline the means by which funding is provided on a competitive basis for school programs, a media marketing and communication program, and a cessation program for pregnant women.

In compliance with Iowa Code section 17A.4(2) and 2000 Iowa Acts, House File 2565, section 16, the Department has the authority to adopt emergency rules and finds that notice and public participation are unnecessary because the rules confer a benefit on the general public as it is important to get funding to the community level immediately.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and these rules should be made effective upon filing with the Administrative Rules Coordinator on October 13, 2000, as they confer a benefit on the general public.

These rules are also published herein under Notice of Intended Action as **ARC 0246B** to allow for public comment.

These rules are intended to implement 2000 Iowa Acts, House File 2565.

These rules became effective October 13, 2000.

The following **new** chapters are adopted.

CHAPTER 151

**TOBACCO USE PREVENTION AND CONTROL
COMMUNITY PARTNERSHIP INITIATIVE**

641—151.1(78GA,HF2565) Scope. These rules apply to community partnerships established under 2000 Iowa Acts, House File 2565, as part of a comprehensive tobacco use prevention and control initiative to reduce tobacco use by youth and pregnant women, to promote compliance by minors and retailers with tobacco sales laws and ordinances, to enhance the capacity of youth to make healthy choices and to foster a social and legal climate in which tobacco use becomes undesirable and unacceptable.

641—151.2(78GA,HF2565) Community partnership areas. It is the goal of the commission on tobacco use prevention and control that the entire state be divided into multiple community partnership areas, so that all portions of the state are included in a community partnership area and no portion of the state is without the services of a community partnership. Toward this goal, the commission will encourage formation of community partnership areas that incorporate surrounding communities in a manner that does not isolate any geographic region of the state, and encourages optimal use of resources. In addition to the requirements of 2000 Iowa Acts, House File 2565, section 8, subsection 1, a community partnership area:

151.2(1) Shall be composed of one or more counties, school districts, economic development enterprise zones, or community empowerment areas.

151.2(2) Shall follow existing boundaries of one or more counties, school districts, economic development enterprise zones, or community empowerment areas.

151.2(3) Shall serve a population of at least 4,000, including a minimum school-age population of 500.

151.2(4) Shall serve a minimum geographic area of one county.

641—151.3(78GA,HF2565) Community partnerships. A community partnership is a public agency or nonprofit organization which utilizes broad community involvement and represents a broad coalition of community groups, organizations, and interests. Community partnerships shall promote a wide range of activities that discourage tobacco use and support smoke-free environments. Some of these activities include developing coalitions with local organizations, conducting educational programs and encouraging policies that support tobacco use prevention and cessation.

641—151.4(78GA,HF2565) Application requirements for community partnerships. In order to qualify for funding through the tobacco use prevention and control program, a public agency or nonprofit organization seeking to be designated as a community partnership must apply to, and be approved by, the department of public health. Only one application per community partnership will be accepted. An application must provide the following information:

151.4(1) A description of the community partnership area to be served by the community partnership, including:

- a. The geographic boundaries of the area;
- b. Population, including both general population and school-age population, of the area;

151.4(2) A description of the applicant, including a description of the governing structure of the agency or organization, a table of organization, and the applicant's mission statement;

151.4(3) A description of the tobacco use prevention and control services currently provided by the applicant;

151.4(4) A description of the number of years the applicant has provided tobacco use prevention and control services and the number of clients served annually by the applicant;

151.4(5) A description of the funds currently received by the applicant which are targeted to provide tobacco use prevention and control services, including the source of funds, the dollar amount, and the period of funding;

151.4(6) A list of the other agencies, organizations, and entities currently providing tobacco use prevention and control services in the proposed community partnership area and a description of the tobacco use prevention and control ser-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

vices currently provided by the other agencies, organizations, or entities;

151.4(7) A description of the collaborative efforts the applicant has undertaken with the agencies, organizations, and entities described in subrule 151.4(6) and an action plan describing anticipated collaborative efforts during the funding period;

151.4(8) Letters of support from the agencies, organizations, and entities described in subrule 151.4(6);

151.4(9) If the local board of health is not the applicant, a letter of support from the local board of health shall be submitted with the application. The letter of support must include a description of the local board of health's involvement with development of the application and an action plan describing anticipated collaborative efforts between the applicant and the local board of health;

151.4(10) A letter of support from county and city law enforcement agencies shall be submitted with the application. The letter of support must include a description of the local law enforcement agencies' involvement with development of the application and an action plan describing anticipated collaborative efforts between the applicant and local law enforcement agencies;

151.4(11) An assessment of the needs of the community partnership area which incorporates, but is not limited to, the following information for each county in the community partnership area:

a. Tobacco-related information from the community health needs assessment and health improvement plan (CHNA and HIP);

b. Tobacco-related information from the most recent Iowa youth survey;

c. Relevant data regarding tobacco use;

d. Relevant Synar data;

e. Information or data received from other service providers, organizations, or law enforcement agencies;

f. Tobacco-related information from Healthy Iowans 2010;

151.4(12) A description of how the applicant intends to implement the initiative's goals described in 2000 Iowa Acts, House File 2565, section 6, subsection 2, in light of the community needs identified in subrule 151.4(11), including a proposed budget and a description of how performance measures shall be developed and utilized;

151.4(13) Identification of the source and amount of local matching funds, services, or support;

151.4(14) A description of how youth (aged 5 to 24 years) will be involved in the community partnership.

641—151.5(78GA, HF2565) Performance indicators. Periodic reports shall be submitted to the department by the community partnerships. These required reports shall be based on the degree to which the partnerships have achieved goals set out in the application and shall include information such as how many events/meetings were held and how many participants were in attendance.

641—151.6(78GA, HF2565) Application deadline. Applicants seeking to be approved as a community partnership for distribution of funds during the 2001 fiscal year may apply immediately and must apply no later than November 10, 2000.

151.6(1) Application must be on forms supplied by the department of public health. To obtain an application form, contact the director of the Tobacco Use Prevention and Control Division, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa

50319; E-mail mcrawfor@idph.state.ia.us; telephone (515) 281-6225.

151.6(2) Any change in the geographic boundaries of a community partnership area after a community partnership has been approved must be submitted to the tobacco use prevention and control division as a request to amend the application. The request shall describe the boundary change, explain the reason for the boundary change and describe any impact the boundary change will have on the information provided in response to rule 151.4(78GA, HF2565).

641—151.7(78GA, HF2565) Distribution of funding.

151.7(1) Applications submitted in accordance with these rules will be evaluated by the administrator of the division of tobacco use prevention and control, or the administrator's designee, to determine whether the application meets the requirements for funding as designated in these rules. The administrator or designee may request additional information from any applicant regarding the content of the application and may condition funding based on an applicant's submission of additional information or based on an applicant's willingness to change any term of the application, including geographic boundaries of the community partnership area.

151.7(2) The commission shall fund one community partnership per community partnership area. Funds shall be distributed equitably among the state's community partnership areas based on general population, school-age population, and designation of county or counties which comprise the community partnership area as a rural county or a metropolitan statistical area as defined by the U.S. Bureau of the Census. Available funds will be distributed under the following formulas:

Rural counties:

\$.84 per school-age youth plus

an additional \$.84 per non-school-age county resident

Metropolitan statistical areas (Black Hawk, Dallas, Dubuque, Johnson, Linn, Polk, Pottawattamie, Scott, Warren, and Woodbury Counties):

\$.52 per school-age youth plus

an additional \$.52 per non-school-age county resident

151.7(3) Funding received by a community partnership shall be matched on a one-to-one basis. At least 25 percent must be a cash match. Up to 75 percent of the match may include in-kind services, office support, or other tangible support or offset of costs.

Any offers to assist the applicant in reaching the match must be disclosed to the department in writing. In regard to any cash offers that are declined, the applicant must disclose reasons and rationale as to why these offers were declined.

151.7(4) Prior to receiving funding, a community partnership shall be required to execute a contract with the department.

151.7(5) Funding may be denied on grounds including, but not limited to:

a. Applications from more than one entity have been received covering the same, or portions of the same, geographic area and another application more closely satisfies application criteria.

b. The application is incomplete, untimely, or includes misleading or inaccurate information.

c. Program funds are no longer available.

d. Local matching funds, services, or support is not available.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

e. The applicant refuses to execute a contract with the department.

f. The applicant fails to comply with the statute or administrative rules governing this program.

These rules are intended to implement 2000 Iowa Acts, House File 2565.

CHAPTER 152
TOBACCO USE PREVENTION AND CONTROL
FUNDING PROCESS

641—152.1(78GA, HF2565) Scope and purpose. In addition to funding community partnerships in accordance with 641—Chapter 151, it is the goal of the commission on tobacco use prevention and control to provide funding for other programs for the purpose of achieving the goals of the initiative as defined in 2000 Iowa Acts, House File 2565. Toward this end, the commission intends to provide funding on a competitive basis for school programs; a media, marketing, and communications program; and a cessation program for pregnant women.

641—152.2(78GA, HF2565) Funding.

152.2(1) In addition to other requests for proposals necessary to implement the initiative, the commission shall issue a request for proposal (RFP) for the youth program, the media, marketing and communications program, and the cessation program for pregnant women. The RFP for each program shall include the amount of funding available, the project period, the services to be delivered, performance measures, application due date and other relevant time frames, a description of the review process, the review criteria to be used, expected contract terms, and a reference to the appeal process in the event an application is denied.

152.2(2) Applications submitted in accordance with these rules shall be evaluated in accordance with the review process described in the RFP. The administrator of the division of tobacco use prevention and control shall make the final determination regarding funding and shall notify all applicants regarding funding decisions by restricted certified mail, return receipt requested.

641—152.3(78GA, HF2565) Appeals.

152.3(1) Any request for an appeal concerning denial or partial denial of an application for funding shall be submitted by an aggrieved party in writing to the department by certified mail, return receipt requested, within ten days of receipt of the notice of denial. The address is Department of Public Health, Tobacco Use Prevention and Control Division, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. The request for appeal must state the party's complete legal name, street address, telephone number, fax number, and the specific grounds upon which the party challenges the board's denial, including legal authority, if any. The request for appeal commences a contested case.

152.3(2) Upon receipt of an appeal, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by the department regarding transmission of contested cases.

152.3(3) The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 4.

152.3(4) When the hearing officer makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceeding ten days after it is received by the aggrieved party unless an

appeal to the commission is taken as provided in subrule 152.3(5).

152.3(5) Any appeal to the commission for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the commission by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reasons for appeal.

152.3(6) Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the commission.

152.3(7) Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

152.3(8) Each party shall have the opportunity to file exceptions and present briefs. The administrator may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the administrator shall notify all parties of the date, time and location at least ten days in advance.

152.3(9) The commission shall not receive any additional evidence, unless it grants an application to present additional evidence. Any such application must be filed by a party no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the commission shall order the conditions under which it shall be presented.

152.3(10) The commission's final decision shall be in writing and it may incorporate all or part of the proposed decision.

152.3(11) The decision and order of the commission becomes the department's final agency action pursuant to Iowa Code chapter 17A upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

These rules are intended to implement Iowa Code chapter 17A and 2000 Iowa Acts, House File 2565.

[Filed Emergency 10/13/00, effective 10/13/00]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0229B

SECRETARY OF STATE[721]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

2000 Iowa Acts, House File 2330, requires county commissioners of elections to post a sign stating "vote here" at the entrance to each driveway leading to the building where a polling place is located. The sign must be visible from the street or highway fronting the driveway, but shall not en-

SECRETARY OF STATE[721](cont'd)

croach upon the right-of-way of such street or highway. This new rule provides minimum dimensions for these signs (16 inches by 24 inches). It also provides guidance about the placement of "vote here" signs when buildings housing polling places have driveways that lead away from the entrance to the voting area or when placement of the sign would not be helpful in locating the voting area.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 9, 2000, as **ARC 0022B**. A public hearing was scheduled for August 29, 2000; however, no one appeared to speak. No written comments were received. This rule was Adopted and Filed and published in the October 4, 2000, Iowa Administrative Bulletin as **ARC 0167B**, effective November 8, 2000.

Pursuant to Iowa Code section 17A.5(2)"b"(2), this rule shall become effective on November 7, 2000. The Secretary of State finds that this rule confers a benefit upon the public by providing guidance to the county commissioners of elections in the deployment of signs required by law to be posted at the polling places for the General Election to be held on November 7, 2000.

This rule is intended to implement Iowa Code section 49.21 as amended by 2000 Iowa Acts, House File 2330.

This rule will become effective on November 7, 2000.

The following **new** rule is adopted.

721—21.8(78GA, HF2330) "Vote here" signs.

1. Size. The signs shall be no smaller than 16 inches by 24 inches.

2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a "vote here" sign at the driveway entrance would not help potential voters find the voting area, no "vote here" sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21 as amended by 2000 Iowa Acts, House File 2330.

[Filed Emergency After Notice 10/10/00, effective 11/7/00]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0250B

ALCOHOLIC BEVERAGES
DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 123.21 and 123.186, the Alcoholic Beverages Division of the Department of Commerce hereby amends Chapter 16, "Trade Practices," Iowa Administrative Code.

The amendment interprets statutory language in Iowa Code section 123.45 to narrowly define "interest" and to exclude remote corporate connections that do not affect retail businesses directly or indirectly.

Under Iowa Code section 123.45, a person engaged in the business of manufacturing, bottling, or wholesaling alcoholic beverages, wine, or beer shall not, directly or indirectly, be interested in the ownership, conduct, or operation of the business of another licensee or permittee authorized under Iowa Code chapter 123 to sell at retail or to hold a retail liquor control license or retail wine or beer permit.

In 1995, the Office of the Attorney General issued an advice letter to the Alcoholic Beverages Division and analyzed this statutory language as prohibiting any holdings or subsidiaries of Bass Ale, a brewer, bottler and importer of alcoholic beverages, from obtaining a permit or license to operate an Iowa retail establishment. Over the past five years, numerous jurisdictions have examined this issue under similar statutory provisions and concluded that the corporate connection of a manufacturer, bottler, or wholesaler may be so remote that rigid application of the statutory prohibition to an applicant for a license or permit is unreasonable. At least 13 states have reviewed their tied house laws and concluded that an industry member may have a corporate connection to a retail establishment that is sufficiently remote so as not to constitute either a direct or indirect interest in the retail outlet. The states that have permitted these arrangements have established conditions similar to those set forth in the adopted rule.

An Alcoholic Beverages Commission meeting was held at 2 p.m., October 9, 2000, in the Conference Board Room, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa, at which time the Commission approved this amendment for adoption by the Administrator. The Administrator also adopted the amendment on October 9, 2000.

Notice of Intended Action was published in the August 9, 2000, Iowa Administrative Bulletin as ARC 0036B. A public hearing was held at 2 p.m., August 29, 2000, in the Conference Board Room, Alcoholic Beverages Division, 1918 S.E. Hulsizer Road, Ankeny, Iowa, at which time both written and oral comments were received. Additional comments were received at the Administrative Rules Review Committee meeting held September 12, 2000, in the Reagan Conference Room, State Capitol Building, Des Moines, Iowa.

There are three changes from the Notice. In paragraph 16.2(2)"g," the phrase "20 percent of the combined annual total of all alcoholic beverages" was changed to "20 percent of the total annual liquor sales, 20 percent of the total annual wine sales, and 20 percent of the total annual beer sales." Paragraph 16.2(2)"j" was renumbered as subrule 16.2(3). In response to concerns of the Administrative Rules Review Committee, subrule 16.2(4) was added clarifying that this amendment is not subject to waiver or variance in specific circumstances.

This amendment is intended to implement Iowa Code sections 123.45 and 123.186.

This amendment will become effective December 6, 2000.

The following amendment is adopted.

Amend rule 185—16.2(123) as follows:

185—16.2(123) Interest in a retail establishment.

16.2(1) An industry member is prohibited, directly or indirectly, from:

1 a. Acquiring or holding a partial or complete ownership interest in a retail establishment.

2 b. Acquiring or holding an interest in the real or personal property owned, occupied or used by the retailer in the conduct of the retail establishment.

3 c. Acquiring a mortgage on the real or personal property owned by the retailer.

4 d. Guaranteeing any loan or paying a financial obligation of the retailer, including, but not limited to, personal loans, home mortgages, car loans, operating capital obligations, or utilities.

5 e. Providing financial, legal, administrative or other assistance to a retailer to obtain a license or permit.

16.2(2) For the purposes of this rule, a subsidiary or an affiliate of an industry member shall not be considered to have any interest in the ownership, conduct or operation of a retailer provided all of the following conditions are satisfied:

a. The industry member and the retail establishment do not share any common officers or directors.

b. The industry member does not control the retail establishment.

c. The industry member is not involved, directly or indirectly, in the operation of the retail establishment.

d. The retail establishment is free from control or interference by the industry member with respect to the retailer's ability to make choices as to the types, brands and quantities of alcoholic beverages purchased and sold.

e. The retail establishment sells brands of alcoholic beverages that are produced or distributed by competing industry members with no preference given to the industry member that holds a financial interest in the retailer.

f. There is no exclusion, in whole or in part, of alcoholic beverages sold or offered for sale by competing industry members that constitutes a substantial impairment of commerce.

g. The retail establishment shall not purchase more than 20 percent of the total annual liquor sales, 20 percent of the total annual wine sales, and 20 percent of the total annual beer sales (measured by gallons) from the industry member.

h. The primary business of the retail establishment is not the sale of alcoholic beverages.

i. All purchases of alcoholic beverages by the retail establishment are made pursuant to Iowa's three-tier system as provided for in Iowa Code chapter 123.

16.2(3) A retail establishment shall file verification with the alcoholic beverages division that it is in compliance with the conditions set forth in this rule upon application, renewal or request of the agency.

16.2(4) This rule is not subject to waiver or variance in specific circumstances.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

This rule is intended to implement Iowa Code sections 123.45 and 123.186.

[Filed 10/10/00, effective 12/6/00]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0243B**CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby amends Chapter 26, "North Central Correctional Facility," Iowa Administrative Code.

These rules provide for the days and hours of visits, tours, and offender trips.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0042B** on August 9, 2000.

A public hearing was held on August 29, 2000. No one attended the hearing, and no written or oral comments were received.

Two changes from the Notice have been made. A subrule has been added to rule 201—26.1(904) to clarify that visitation is additionally governed by provisions in Department policy IN-V-122 and rule 201—20.3(904). A subrule regarding visitors leaving money for offenders has been stricken because this subject is also covered in the broader rule on visiting at 201—20.3(904). No other substantive changes were made to the Notice of Intended Action.

The Department of Corrections Board adopted these amendments on October 5, 2000.

These amendments will become effective December 6, 2000.

These rules are intended to implement Iowa Code section 904.512.

The following amendments are adopted.

Amend **201—Chapter 26** as follows:

CHAPTER 26**NORTH CENTRAL CORRECTIONAL FACILITY****201—26.1(904) Visiting.**

26.1(1) Visitation within the north central correctional facility is additionally governed by the provisions of department of corrections policy IN-V-122 and IAC 201—20.3(904).

~~*26.1(1) 26.1(2) Visiting hours are from 8:30 a.m. to 3:30 p.m. on Saturday, and Sunday and Monday, 8:30 a.m. to 3:30 p.m. on Monday, and 12:30 p.m. to 7:30 p.m. on Friday. On Thursday and Friday visiting hours are from 12:30 p.m. to 7:30 p.m. There is no visiting on Tuesday, and Wednesday, or Thursday unless a recognized state holiday falls on either of these days that day, and then the visiting hours shall be 8:30 a.m. to 3:30 p.m.*~~

~~*26.1(2) 26.1(3) Visitors are authorized to bring in only the following items to a visit: one small change purse, wallet or billfold, as long as it does not contain paper money; coin money for the purpose of purchasing items from the vending machines; and, when applicable, one baby bottle, one jar of baby food, three baby diapers, one carrying bag, and one in-*~~

~~*fant seat. Tobacco products are not allowed in the visiting room as smoking is not permitted at any time.*~~

~~*26.1(3) 26.1(4) Visitors shall not give any article to inmates offenders during a visit. This does not apply to purchases from the vending machines which must be consumed during the visit.*~~

~~*26.1(4) Visitors may leave money for inmates at the facility's business office during normal business hours.*~~

~~*26.1(5) Inmates Offenders are permitted three-hour visits on Saturday, Sunday, and recognized state holidays, and four-hour visits are permitted on Monday, Thursday, and Friday. Visits may be extended at the discretion of the warden when visitors are from great distances or when they are only able to make rare visits or in cases when an inmate offender is in need of comfort during a time of personal or family crisis. Visits may be temporarily modified, suspended, or terminated by the warden due to a disturbance, riot, fire, labor dispute, natural disaster, or other emergency; and visits may be temporarily modified or terminated by the shift supervisor due to disruptive conduct by the inmate offender or visitor or due to space restrictions in the visiting room.*~~

~~*26.1(6) Inmates Offenders are permitted eight visits per month from each approved person on the inmate's offender's visiting list.*~~

~~*26.1(7) A maximum of five persons may visit one inmate offender at a time.*~~

~~*26.1(8) A maximum of two inmates offenders may be visited by a visitor at a time, provided both inmates offenders are members of the visitor's immediate family.*~~

~~*26.1(9) Visits with attorneys or chaplains shall be conducted during normal business hours unless previously approved by the warden.*~~

~~*26.1(10) Inmates Offenders in administrative segregation and disciplinary detention may have their visits modified as to length of time and location depending on the conduct which caused placement in that status.*~~

201—26.2(904) Tours.

~~*26.2(1) Tours of the facility are classified as either regular or official tours. A regular tour is given to persons with a genuine interest in corrections and for whom the tour might prove to be beneficial or enlightening, such as students, representatives of the criminal justice system, and probationers under the jurisdiction of the department of corrections or the judicial system. An official tour is given to persons directly related to the operation of the facility such as legislators and the board of corrections.*~~

~~*26.2(2) Sightseeing tours to the general public shall not be allowed unless approved by the warden for specific reasons.*~~

~~*26.2(3) Regular tours shall be conducted on Tuesday and Wednesday between the hours of 9 a.m. and 3 p.m., while official tours shall be conducted during the daytime or evening hours on a day scheduled by the warden.*~~

~~*26.2(4) Minimum age for regular tours is 12 years of age.*~~

~~*26.2(5) Tour groups larger than 30 persons, excluding nonstaff sponsors, shall not be allowed.*~~

~~*26.2(6) Prior approval from the warden is required for relatives or close friends of inmates offenders to tour the facility.*~~

~~*201—26.3(904) Inmate Offender trips. An outside group wishing to have an inmate offender from one of the facility's approved organizations visit it shall send a written request to the warden. Trips are limited to a 100-mile radius from the facility.*~~

CORRECTIONS DEPARTMENT[201](cont'd)

These rules are intended to implement Iowa Code section 904.512.

[Filed 10/13/00, effective 12/6/00]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0230B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 239B.4(4) and 249A.4, the Department of Human Services hereby amends Chapter 40, "Application for Aid," Chapter 41, "Granting Assistance," Chapter 47, "Pilot Diversion Initiatives," Chapter 48, "Family Investment Program Eligibility Under Self-Employment Demonstration Projects," Chapter 60, "Refugee Cash Assistance," Chapter 75, "Conditions of Eligibility," and Chapter 93, "PROMISE JOBS Program," and rescinds Chapter 42, "Unemployed Parent," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments October 11, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0058B**.

These amendments eliminate deprivation as an eligibility factor for the Family Investment Program (FIP) and for Medicaid under the Family Medical Assistance Program (FMAP) and FMAP-related Medicaid coverage groups.

Currently, to be eligible for FIP or Medicaid under FMAP and most FMAP-related coverage groups, a child must be determined to be deprived of parental support or care.

Deprivation for FIP is considered to exist when one or both parents are continually absent from the home or are deceased. For two-parent FIP households, deprivation is considered to exist when one or both of the parents are physically or mentally incapacitated or when both parents meet the specific requirements of the FIP-Unemployed Parent (FIP-UP) program.

A family is considered eligible for FIP-UP assistance when both of the parents:

- Complete the referral to Iowa Workforce Development (IWD) at the time of FIP application;
- Comply with IWD requirements at the time of FIP application;
- Apply for and draw unemployment benefits when eligible;
- Are not involved in a labor dispute; and
- Accept a bona fide offer of employment or training.

These criteria are in addition to all other FIP eligibility factors applicable to both one- and two-parent families.

Currently, one parent from any FIP-Unemployed Parent case must also participate in the FIP-UP work program as part of the family investment agreement.

These amendments eliminate the special requirements of the FIP-UP program, including the FIP-UP work program and designated parent responsibilities in the PROMISE JOBS program. Families with two parents in the home will be subject to the same eligibility requirements as one-parent families. For example:

- The parents will still be subject to PROMISE JOBS and family investment agreement requirements. The family's FIP benefits will terminate when either parent chooses a limited benefit plan rather than cooperate with PROMISE JOBS and family investment agreement activities.

- The family will be ineligible for FIP if either parent is on strike.

- A parent's needs will be removed from the FIP grant for failure to apply for benefits (e.g., unemployment benefits) when eligible, but FIP could be issued for the remaining family members.

A small number of two-parent families will be ineligible for FIP due to the changes. The families which may be affected are two-parent families which include both common children and children from previous relationships. Under current policy, if one of the two parents in such a household refuses to cooperate with the special FIP-UP program requirements, that parent and that parent's children are ineligible for FIP. However, the other parent, and that parent's children from a previous relationship, may be eligible for FIP. Under the rule changes, both parents will be required to be included in the FIP-eligible group. Both parents' income and resources will be considered in determining eligibility and benefits for the entire family.

The Seventy-eighth General Assembly in 2000 Iowa Acts, Senate File 2368, section 2, granted the Department's request to eliminate the special requirements of the FIP-UP program. Eliminating these special requirements makes access to FIP more equitable, as families with two parents in the home will be subject to the same eligibility requirements as one-parent families. In addition, eliminating the special requirements of the FIP-UP program simplifies program policies and procedures thereby expediting eligibility determination and service delivery.

Currently, deprivation for FMAP and FMAP-related Medicaid is considered to exist when a parent is deceased, absent, incapacitated, or when both parents are unemployed. All parents, in meeting the financial requirements of the Medicaid program, are considered unemployed.

The elimination of the deprivation factor for Medicaid will align FMAP-related Medicaid programs with FIP. This also simplifies program policies and procedures. Programs will be more consistent and it will be easier for the field to administer the programs.

These amendments also update language, legal references and form numbers in existing rules.

These amendments do not provide for waivers in specific situations as the FIP amendments implement state law and the Medicaid amendments confer a benefit on Medicaid applicants and recipients.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 239B.2 as amended by 2000 Iowa Acts, Senate File 2368, section 2, and 249A.4.

These amendments shall become effective January 1, 2001.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 40, 41, 47, 48, 60, 75, 93; rescind Ch 42] is being omitted. These amendments

HUMAN SERVICES DEPARTMENT[441](cont'd)

are identical to those published under notice as **ARC 0058B**, IAB 8/23/00.

[Filed 10/11/00, effective 1/1/01]
[Published 11/1/00]

[For replacement pages for IAC, see IAC Supplement 11/1/00.]

ARC 0232B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted this amendment October 11, 2000. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on April 19, 2000, as **ARC 9783A**.

This amendment allows physicians to receive Medicaid payment for applying an FDA-approved topical fluoride varnish for the purpose of preventing and treating early childhood caries (tooth decay) in children aged 0 to 36 months of age.

The Iowa Chapter of the American Academy of Pediatrics petitioned the Department to allow physicians to bill and be paid for the services of oral health screening for children 0 to 3 years of age and fluoride application for children at high risk for early childhood caries. The petition indicated that it was the Chapter's belief that access to a dental professional for children at high risk for early childhood dental caries is problematic, and the proposed service is within the scope of practice for primary health care providers.

The petition also indicated that health, nutritional and developmental guidance is already standard in discussions in the primary care physician's office, as is dental hygiene, as recommended by Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) guidelines. The petition further indicated the belief that these opportunities for health care promotion should not be missed.

This amendment does not provide for waiver in specified situations because it confers a benefit by providing for coverage of these services by physicians.

Eight public hearings were held around the state. Eighteen persons attended. The following revisions were made to the Notice of Intended Action in response to the comments received:

Subrule 78.1(24) was revised to limit the fluoride treatment to an FDA-approved topical fluoride varnish; to limit the ages of the children to be served to children from 0 to 36 months of age; to clarify that payment will be made only for the topical fluoride varnish, as the oral screening is already included as part of the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening examination; to require the physician or auxiliary staff of the physician to inform the parents, legal guardians, or other authorized caregivers of children receiving application of topical fluoride varnish as part of an EPSDT screening examination that this application is not a substitute for comprehensive dental care and to require the physician to make every reasonable effort

to refer or facilitate referral of these children for comprehensive dental care rendered by a dental professional.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment shall become effective January 1, 2001. The following amendment is adopted.

Amend rule 441—78.1(249A) by adopting the following **new** subrule:

78.1(24) Topical fluoride varnish. Payment shall be made for application of an FDA-approved topical fluoride varnish, as defined by the Current Dental Terminology, Third Edition (CDT-3), for the purpose of preventing the worsening of early childhood caries in children aged 0 to 36 months of age, when rendered by physicians acting within the scope of their practice, licensure, and other applicable state law, subject to the following provisions and limitations:

a. Application of topical fluoride varnish must be provided in conjunction with an early and periodic screening, diagnosis, and treatment (EPSDT) examination which includes a limited oral screening.

b. Separate payment shall be available only for application of topical fluoride varnish, which shall be at the same rate of reimbursement paid to dentists for providing this service. Separate payment for the limited oral screening shall not be available, as this service is already part of and paid under the EPSDT screening examination.

c. Parents, legal guardians, or other authorized caregivers of children receiving application of topical fluoride varnish as part of an EPSDT screening examination shall be informed by the physician or auxiliary staff employed by and under the physician's supervision that this application is not a substitute for comprehensive dental care.

d. Physicians rendering the services under this subrule shall make every reasonable effort to refer or facilitate referral of these children for comprehensive dental care rendered by a dental professional.

[Filed 10/11/00, effective 1/1/01]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0233B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 88, "Managed Health Care Providers," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments October 11, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0059B**.

The Seventy-eighth General Assembly in 1999 Iowa Acts, chapter 203, section 51, amended Iowa Code section 249A.18 to require that rural health clinics (RHCs) and federally qualified health centers (FQHCs) receive cost-based reimbursement for 100 percent of the reasonable costs for the provision of services to recipients of medical assistance.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments revise policy regarding reimbursement for RHCs and FQHCs to agree with statute and mandate RHCs' and FQHCs' use of Form 470-3495, Managed Care Wraparound Payment Request Form, to obtain supplemental payment for the difference between payments from a managed care organization and 100 percent of their reasonable cost, as determined by Medicare cost reimbursement principles.

In the case of services provided pursuant to a contract between an FQHC or RHC and a managed care organization, the managed care organization is required to provide payment to the FQHC or RHC that is not less than the amount of payment that it would make for the services if furnished by a provider other than an FQHC or RHC. The Department is required by federal law to supplement the payment from the managed care organization to the FQHC or RHC if the payment is less than 100 percent of the FQHC's or RHC's reasonable cost as determined by Medicare cost reimbursement principles. The form is used to document Medicaid encounters and the difference between payments from the managed care organization and 100 percent of the RHC's or FQHC's reasonable cost.

These amendments do not provide for waivers in specified situations because these amendments confer a benefit on FQHCs and RHCs by clarifying policy and providing a mechanism to reimburse these providers for services provided to recipients enrolled in managed care organizations at 100 percent of reasonable cost as determined by Medicare cost reimbursement principles.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 249A.18.

These amendments shall become effective January 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule 79.1(2), provider categories of "federally qualified health centers (FQHCs)" and "rural health centers (RHCs)," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Federally qualified health centers (FQHC)	Retrospective cost-related <i>See 441—88.14(249A)</i>	1. Reasonable <i>100% of reasonable</i> cost as determined by Medicare cost reimbursement principles 2. In the case of services provided pursuant to a contract between an FQHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" above
Rural health clinics (RHC)	Retrospective cost-related <i>See 441—88.14(249A)</i>	1. Reasonable <i>100% of reasonable</i> cost as determined by Medicare cost reimbursement principles

2. In the case of services provided pursuant to a contract between an RHC and a managed care organization (MCO), reimbursement from the MCO shall be supplemented to achieve "1" above

ITEM 2. Amend rule 441—88.14(249A) as follows:

441—88.14(249A) Contracts with federally qualified health centers (FQHCs) and rural health clinics (RHCs). In the case of services provided pursuant to a contract between an FQHC or RHC and a managed care organization, the organization shall provide payment to the FQHC or RHC that is not less than the amount of payment that it would make for the services if furnished by a provider other than an FQHC or RHC. The payment from the managed care organization to the FQHC or RHC shall be supplemented by a direct payment from the department to the FQHC or RHC to provide ~~reimbursement at 100 percent of reasonable cost~~ ~~reimbursement~~ as determined by Medicare cost reimbursement principles. *FQHCs and RHCs shall be required to submit Form 470-3495, Managed Care Wraparound Payment Request Form, to the Iowa Medicaid fiscal agent to document Medicaid encounters and differences between payments by the managed care organization and 100 percent of reasonable cost as determined by Medicare cost reimbursement principles.*

[Filed 10/11/00, effective 1/1/01]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0234B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 182, "Family-Centered Services," and Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments October 11, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0086B**.

These amendments allow children who are in out-of-home placement where family reunification is not the case plan goal to continue to receive rehabilitative treatment and supportive services such as day treatment from a family-centered provider without regard to income. Services may be continued if the services for the child are determined by the referral worker to be necessary in order to maintain the child's productive relationship with a previous provider, to provide a type of service program not available under the out-of-home placement program, or to maintain the child's permanent placement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

No fiscal impact is anticipated as these services are currently being provided on an exception-to-policy basis. More than 120 exceptions have been requested over the past year. These amendments will allow greater ease of service access for clients and for juvenile courts working to develop family service plans.

These amendments do not provide for waivers in specified situations because these changes actually provide greater access to family-centered services for children and families and eliminate the need for policy exceptions to be requested to receive these services.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 234.6 and 234.38.

These amendments shall become effective January 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **182.2(1)**, paragraph “b,” as follows:

b. Children are in out-of-home placement, family reunification is the case plan, and services for the children and their families are necessary to achieve this goal *or family reunification is not the case plan goal but services for the child from a family-centered provider are determined by the referral worker to be necessary in order to maintain the child's productive relationship with a previous provider, to provide a type of service program not available under the out-of-home placement program, or to maintain the child's permanent placement.*

ITEM 2. Amend **441—Chapter 185, Division II, Family-Centered Program, Preamble**, first paragraph, as follows:

Family-centered services provide assistance to *children and their families* to prevent and alleviate child abuse and neglect, to prevent and alleviate delinquency, to prevent out-of-home child placements, to reunite families that have had children placed outside the home, *to promote service continuity or provide specialized service programs as necessary for children placed in out-of-home care when reunification is not the case plan goal*, and to maintain family reunification *or other alternative permanent placement* after a child has been returned to the family *or placed in a permanent setting* after an out-of-home placement. ~~These services promote family self-sufficiency by providing temporary assistance that permits and encourages parents to keep or gain a responsible level of control over their family's activities and their role in the community.~~

[Filed 10/11/00, effective 1/1/01]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0237B**IOWA FINANCE AUTHORITY[265]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(17), the Iowa Finance Authority hereby amends Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

This rule making incorporates by reference the compliance manual for the Low-Income Housing Tax Credit Program (Program). The compliance manual incorporates the Authority's policies for monitoring compliance in the Program. The manual also contains copies of the operative federal regulations, revenue rulings, revenue procedures, technical advice and other information low-income housing tax credit project owners may need as they complete the necessary forms to facilitate compliance monitoring with the Program. Copies of the compliance manual are available upon request from the Authority and are available electronically on the Authority's Web site at <http://www.ifahome.com>. The Authority adopts the compliance manual by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules. The compliance manual is subject to federal requirements that cannot be waived. Waiver would result in noncompliance with federal law and could endanger the tax credit available to a particular project. (See IRC Section 42 and Iowa Code section 16.52.)

Consistent with Executive Order Number 9, the Authority has considered the regulatory principles identified in the Order and finds that the rules will serve an important public need in bringing the rules of the Authority into compliance with the provisions of Iowa Code section 16.4(3). The rules will further the housing policy of the state to encourage the production of affordable housing in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0062B**. Written comments were received. A public hearing was held on September 12, 2000, to receive public comments. The comments were received on the compliance manual rather than the actual text of the rule itself. The comments received regarding the manual can be divided into the following areas: (1) comments addressing mechanical or technical language changes and (2) questions regarding application of the manual.

Based on these comments, changes were made to the manual. Additionally, the comments and the Authority's responses to the comments were posted to the Authority's Web site. The only changes to the text of the rule were the effective date of the rule and of Internal Revenue code regulations incorporated into the manual.

These rules are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

The Authority adopted these rules on October 4, 2000.

These rules will become effective on December 6, 2000. The following rules are adopted.

Adopt the following new rules:

265—12.3(16) Compliance manual. The compliance manual for all low-income housing tax credit projects monitored by the authority for compliance with IRC Section 42, effective December 6, 2000, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at <http://www.ifahome.com>. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of December 6, 2000. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available

IOWA FINANCE AUTHORITY[265](cont'd)

from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

[Filed 10/12/00, effective 12/6/00]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0248B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby amends Chapter 80, "Board of Dietetic Examiners," and adopts new Chapter 81, "Continuing Education for Dietitians," Iowa Administrative Code.

The amendments rescind the current continuing education rules, adopt a new chapter for continuing education, amend a definition, and amend license renewal language.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0079B**. A public hearing was held on September 12, 2000, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

One change has been made to the Notice of Intended Action. In rule 645—81.8(152A,272C), for clarification, the word "waiver" has been changed to "exemption" for the inactive practitioner.

These amendments were adopted by the Board of Dietetic Examiners October 13, 2000.

These amendments will become effective December 6, 2000.

These amendments are intended to implement Iowa Code section 147.76 and chapters 152A and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [80.1, 80.8(5), 80.8(6), 80.100 to 80.108, 80.214, 80.220, Ch 81] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0079B**, IAB 8/23/00.

[Filed 10/13/00, effective 12/6/00]
[Published 11/1/00]

[For replacement pages for IAC, see IAC Supplement 11/1/00.]

ARC 0247B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby amends Chapter 101, "Board of Mortuary Science Examiners," and adopts new Chapter 102, "Continuing Education for Mortuary Science," Iowa Administrative Code.

The amendments rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rules regarding discipline, reinstatement of a lapsed license, inactive practitioners, fees, method of discipline, disciplinary proceedings and peer review committees; and adopt rules for the student practicum as enacted in 2000 Iowa Acts, Senate File 2302, section 42.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 6, 2000, as **ARC 0116B**. A public hearing was held on September 26, 2000, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

One change has been made to the Notice of Intended Action. In rule 645—102.8(272C), for clarification, the word "waiver" has been changed to "exemption" for the inactive practitioner.

These amendments were adopted by the Board of Mortuary Science Examiners October 12, 2000.

These amendments will become effective December 6, 2000.

These amendments are intended to implement Iowa Code section 147.76 and chapter 272C and 2000 Iowa Acts, Senate File 2302, section 42.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [101.3(1), 101.4 to 101.11, 101.98, 101.100 to 101.109, 101.200, 101.212 to 101.215, 101.300, Ch 102] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0116B**, IAB 9/6/00.

[Filed 10/13/00, effective 12/6/00]
[Published 11/1/00]

[For replacement pages for IAC, see IAC Supplement 11/1/00.]

ARC 0241B
RACING AND GAMING
COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 1, "Organization and Operation," and Chapter 3, "Public Records and Fair Information Practices"; rescinds Chapter 7, "Greyhound Racing," and adopts a new Chapter 7 with the same title; adopts a new Chapter 11, "Gambling Games," and a new Chapter 12, "Accounting and Cash Control"; and rescinds Chapter 22, "Manufacturers and Distributors," Chapter 24, "Accounting and Cash Control," and Chapter 26, "Rules of the Games," Iowa Administrative Code.

Item 1 adopts a waiver rule required by statute.

Items 3, 4 and 5 update the Commission's version of the uniform rule on fair information practices.

Item 6 rescinds current Chapter 7 and adopts new Chapter 7 which incorporates rules on greyhound racing. Many of the rules remain as they were but have been reorganized within the new Chapter 7. Duplicative rules have been removed and some rules were rewritten to reflect current practice. Substantive changes from rescinded Chapter 7 incorporated into new Chapter 7 are as follows:

- Subrule 7.3(9) requires the clerk of scales to observe both the weight display and scale platform when reading the weight.

- In subrule 7.7(15), the age of a greyhound pup eligible to race is changed from 14 months to 16 months.

- Subrule 7.9(7) requires that the facility must list the weight regulations in the program.

Item 7 adopts a new Chapter 11 which incorporates rules regarding rules of the games and manufacturers and distributors from Chapters 22 and 26, which are rescinded in Item 9. Many of the rules remain as they were but have been reorganized within the new Chapter 11. Duplicative rules have been removed and some rules were rewritten to reflect current practice.

Item 8 adopts a new Chapter 12 (rescinded IAB 9/6/00, **ARC 0105B**) which incorporates rules on accounting and cash control from Chapter 24, which is rescinded in Item 9. Many of the rules remain as they were but have been reorganized within the new Chapter 12. Duplicative rules have been removed and some rules were rewritten to reflect current practice.

Item 9 rescinds Chapters 22, 24, and 26.

These amendments were published under Notice of Intended Action in the September 6, 2000, Iowa Administrative Bulletin as **ARC 0106B**. The following changes have been made to the Notice of Intended Action:

In subrule 11.4(1), the second sentence was reworded and now reads as follows: "The distributor, at its own expense, must provide the administrator with information and product sufficient to determine the integrity and security of the product, including independent testing conducted or contracted by the commission."

In subrule 11.4(2), the first sentence was reworded and now reads as follows: "Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the gambling game in a facility."

In paragraph 11.9(2)"a," a slot machine's maximum theoretical payout was changed from 99 percent to 100 percent.

In subrule 11.12(8), some minor editorial changes were made.

A public hearing was held on September 26, 2000. The only comment received was a request to change the maximum theoretical payout.

These amendments will become effective December 6, 2000.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.8, 3.3(7); adopt Chs 7, 11, 12; rescind Chs 22, 24, 26] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0106B**, IAB 9/6/00.

[Filed 10/13/00, effective 12/6/00]
 [Published 11/1/00]

[For replacement pages for IAC, see IAC Supplement 11/1/00.]

ARC 0236B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4(1)"b," the Utilities Board (Board) gives notice that on October 4, 2000, the Board issued an order in Docket No. RMU-00-1, In re: Rule Waivers, "Order Adopting Rules," that rescinded the former waiver rule and adopted new waiver rules.

On July 31, 2000, the Board issued an order commencing a rule making to receive public comment on the rescission of the Board's waiver rule at 199 IAC 1.3(17A,474) and the adoption of a new waiver rule at 199 IAC 1.3(17A,474,476, 78GA, HF2206) and a waiver request form at 2.2(17). Notice of Intended Action was published in the Iowa Administrative Bulletin on August 23, 2000, as **ARC 0070B**.

The new waiver rule is intended to replace the existing waiver rule by implementing changes in 2000 Iowa Acts, House File 2206, and Executive Order Number 11, insofar as the Executive Order conforms to 2000 Iowa Acts, House File 2206.

On September 12, 2000, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a written Statement of Position in support of the new rule. Also on September 12, 2000, the Iowa Association of Municipal Utilities filed a written comment agreeing with the new rule and stating it believed the rule was fully consistent with 2000 Iowa Acts, House File 2206.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.

These amendments will become effective December 6, 2000.

The following amendments are adopted.

ITEM 1. Rescind rule 199—1.3(17A,474) and adopt the following **new** rule in lieu thereof:

UTILITIES DIVISION[199](cont'd)

199—1.3(17A,474,476,78GA,HF2206) **Waivers.** In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

1. The application of the rule would pose an undue hardship on the person for whom the waiver is requested;
2. The waiver would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the rule for which the waiver is requested.

The burden of persuasion rests with the person who petitions the board for the waiver. If the above criteria are met, a waiver may be granted at the discretion of the board upon consideration of all relevant factors.

Persons requesting a waiver may use the form provided in 199—subrule 2.2(17), or may submit their request as a part of another pleading. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if they have not already been provided to the board in another pleading. The waiver request must also state the scope and operative period of the requested waiver. If the request is for a permanent waiver, the requester must state reasons why a temporary waiver would be impractical.

The waiver shall describe its precise scope and operative period. Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

This rule is intended to implement Iowa Code chapters 17A, 474, and 476 and 2000 Iowa Acts, House File 2206.

ITEM 2. Amend 199—2.2(17A,474) by adopting the following **new** subrule:

2.2(17) Waiver request.

STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD

(insert case title)



DOCKET NO. (insert docket No.)
WAIVER REQUEST

COMES NOW (insert name of person requesting the waiver), and files this request for a waiver, and in support states:

1. (Insert the specific waiver requested, including a citation to the specific rule the requester wants to be waived, and the precise scope and operative period of the requested waiver. If the request is for a permanent waiver, state the reasons why a temporary waiver would be impractical.)
2. (Insert the relevant facts and reasons that show each of the following: (a) the application of the rule would pose an undue hardship on the person for whom the waiver is requested; (b) the waiver would not prejudice the substantial legal rights of any person; (c) the provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and (d) substantially equal protection of public health, safety, and welfare will be

afforded by a means other than that prescribed in the rule for which the waiver is requested.)

3. (Insert the names of the persons who may be adversely impacted by the grant of the waiver, if known.)

WHEREFORE, (insert name of requester) prays the board grant the request for a waiver of the rule specified above.

Respectfully submitted,

(signature of requester)
(name)
(address and zip code)

[Filed 10/12/00, effective 12/6/00]
[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

ARC 0235B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.41, the Utilities Board (Board) gives notice that on October 11, 2000, the Board issued an order in Docket No. RMU-00-8, In re: Self-Generation, "Order Adopting Rules." The amendments to rule 199—15.1(476) and subrule 15.11(5) clarify that a "qualifying facility" under the Public Utility Regulatory Policies Act of 1978 (PURPA) may or may not be an alternate energy production facility under Iowa law and that a small power producer is allowed to use some or all of its output.

On August 3, 2000, the Board issued an order to consider adopting amendments to 199 IAC 15.1(476) and 15.11(5). The proposed rule making was published in IAB Vol. XXIII, No. 4 (8/23/00) p. 363, as **ARC 0071B**. The Consumer Advocate Division of the Department of Justice, Alliant Energy (Alliant), and MidAmerican Energy Company filed written statements of position. All those filing statements, except Alliant, supported the adoption of the proposed amendments. An oral presentation was held on September 27, 2000. All those filing written statements participated.

The definition of "qualifying facility" in rule 199—15.1(476) currently provides that an alternate energy production facility under Iowa law may not be a PURPA qualifying facility. The amendment eliminates this restriction. In fact, Iowa Code section 476.42(1) states that a qualifying facility is not precluded from being an alternate energy production facility under Iowa law. The current rule, contrary to the statute, inadvertently excludes alternate energy production facilities under Iowa law from also being PURPA qualifying facilities.

Alliant expressed concern that changing the definition will create ambiguity because different rules apply to PURPA qualifying facilities and alternate energy production facilities under Iowa law. While a facility that is both a PURPA and state facility may have additional requirements to meet, the requirements do not conflict. The amendment does not create an ambiguity and in fact makes the rule consistent with Iowa Code section 476.42(1).

The second paragraph of subrule 15.11(5) is ambiguous because it arguably can be read to require a small power producer to sell all of its production to the host utility. This is not

UTILITIES DIVISION[199](cont'd)

the intent of the rule. The rule emphasizes choice for the facility and was not intended to require a producer to sell all of its output to the utility. A producer should be allowed to use some or all of its output and the amendment clarifies this intent.

The amendment to the second paragraph eliminates any potential ambiguity. In adopting this amendment, the Board recognizes that subrule 15.11(5) is the subject of pending litigation. The Polk County District Court found the first paragraph of the rule, which concerns net billing and is not being amended, to be preempted by federal law. The Board and the Consumer Advocate Division of the Department of Justice appealed this ruling to the Iowa Supreme Court (*MidAmerican Energy Company v. Iowa Utilities Board*, S.Ct. No. 99-1529). However, the Board notes that its interpretation of the second paragraph of the rule is consistent with the District Court's discussion (*MidAmerican Energy Company v. Iowa Utilities Board*, Nos. AA 3173, AA 3195, AA 3196 (8/26/99, Polk County District Court)). The Board does not believe the District Court's decision invalidated the second paragraph of the rule.

Alliant commented that the words "any electricity" should be changed to "all electricity." This change would negate the intent of the rule, which is to make clear that an alternate energy producer can consume some or all of its output and does not have to sell its entire output to the host utility. The Board rejected similar arguments made by Alliant in an August 4, 2000, decision in Docket No. C-00-171, In re: Eldora-New Providence Community School District.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general

waiver provision in rule 199—1.3(17A,474) is applicable to these rules.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 476.1 and 476.41.

The amendments will become effective on December 6, 2000.

The following amendments are adopted.

ITEM 1. Amend rule **199—15.1(476)**, definition of "qualifying facility," as follows:

"Qualifying facility" means a cogeneration facility or a small power production facility which is a qualifying facility under 18 CFR Part 292, Subpart B, ~~and which is not a qualifying alternate energy production facility or a qualifying small hydro facility.~~

ITEM 2. Amend subrule **15.11(5)**, second paragraph, as follows:

In the alternative, by choice of the facility, the electric utility and facility shall operate in a ~~simultaneous~~ purchase and sale arrangement whereby ~~all any~~ electricity ~~produced~~ *provided to the utility* by the qualifying facility is sold to the utility at the fixed or negotiated buy-back rate, and ~~all any~~ electricity ~~used by~~ *provided to the qualifying facility by the utility* is sold to the facility at the tariffed rate.

[Filed 10/12/00, effective 12/6/00]

[Published 11/1/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/1/00.

AGENCY	RULE	DELAY
Natural Resource Commission[571]	76.1(2) [IAB 9/6/00, ARC 0099B]	At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date from October 11, 2000, until adjournment of the 2001 Session of the General Assembly. [Pursuant to §17A.8(9)]
Revenue and Finance Department[701]	107.16; 108.4“6” [IAB 9/20/00, ARC 0138B]	At its meeting held October 9, 2000, the Administrative Rules Review Committee delayed the effective date from October 25, 2000, until adjournment of the 2001 Session of the General Assembly. [Pursuant to §17A.8(9)]

*SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL

THOMAS J. MILLER

July through September, 2000

CITIES; CONFLICT OF INTERESTS

Council member also serving as chief of volunteer fire department. Iowa Code § 372.13(10) (1999). Section 372.13(10), which permits a city council to appoint one of its members as chief of its volunteer fire department "if the fire department serves an area with a population of not more than two thousand," contemplates that the city council may employ any reasonable method for estimating an area's population in the absence of definitive data from the last preceding certified federal census. (Kempkes to Lievens, Butler County Attorney, 8-9-00) #00-8-1(L)

CITIES; COUNTIES

Iowa Code §§ 384.37, 384.38, 384.45 (1999). Cities may specially assess county property under chapter 384 for the cost of public improvements. (Kempkes to Whitacre, Mills County Attorney, 8-10-00) #00-8-4

CLERK OF COURT

Duties and powers in civil commitment cases. Iowa Code §§ 229.6, 229.7, 229.44, 602.8102 (1999). District court clerks, by themselves, have no authority under either chapter 229 or chapter 602 to impose conditions upon a county that, pursuant to court order, has transferred civil commitment cases to their counties. (Kempkes to Vander Hart, Buchanan County Attorney, 8-31-00) #00-8-6(L)

CONSTITUTIONAL LAW; EQUAL PROTECTION; ELECTIONS; STATE FAIR BOARD; STATE OFFICERS AND DEPARTMENTS

Selection of State Fair Board District Directors; Apportionment of State Fair Board Districts. Iowa Code §§ 173.1, 173.2 (1999). The selection of district directors to serve on the State Fair Board is not subject to the constitutional principle of one person, one vote because the district directors are not popularly elected. Consequently, proportionate representation is not necessary when apportioning the districts from which the State Fair Board's directors are chosen. (Lundquist to Brauns, State Representative, 8-31-00) #00-8-7

COUNTIES; COUNTY OFFICERS; PUBLIC FUNDS

Creation of advisory board; acceptance of gifts by advisory board; transfer of county-owned funds to nonprofit corporation for expenditure and investment. Iowa Code §§ 12B.10, 12C.1, 28E.4, 331.401, 331.555, 350.4, 350.6, 350.7 (1999). A county conservation board has authority to create an advisory board for such tasks as finding facts, offering counsel, or making recommendations. An advisory board receiving gifts of money from private donors for general or specific conservation purposes must transfer them in a timely manner to the county conservation board. (Kempkes to Bjornstad, Dickinson County Attorney, 8-9-00) #00-8-2(L)

COUNTIES; EMERGENCY MANAGEMENT

County's relationship to local emergency management commission. Iowa Code §§ 29C.9, 29C.17, 331.381 (1999). County supervisors lack statutory authority to place a local emergency management commission, comprised of representatives from the county as well as from cities within the county, under the control of the county sheriff or some other county office. (Kempkes to Wolf, Clinton County Attorney, 9-21-00) #00-9-2(L)

COUNTIES; PURCHASE OF SERVICE PROVIDERS; REIMBURSEMENT RATES

Obligations of counties to pay reimbursement rate increases to purchase of service providers negotiated by host counties. House File 2555, 78th G.A., 2nd Sess., § 3(2)(c) (Iowa 2000); Senate File 2452, 78th G.A., 2nd Sess., § 4 (Iowa 2000). Non-host county must pay reimbursement rate increase, up to five percent, negotiated by host county, unless provider exempts self from statute. (Johnson to Redwine, State Senator, 9-26-00) #00-9-4(L)

COUNTY AND COUNTY OFFICERS; MUNICIPALITIES; SCHOOL DISTRICTS

Mileage reimbursement for conference board. Iowa Code §§ 279.32, 331.215, 331.401, 372.13, 441.2 (1999). County supervisors who serve as members on county conference boards have a statutory right to receive mileage reimbursement from the county for travel between their homes and conference board meetings. Other members who serve on conference boards may seek mileage reimbursement, to the extent provided by statute, from their respective governmental entities for travel between their homes and conference board meetings. (Kempkes to Bonnett, Taylor County Attorney, 8-9-00) #00-8-3(L)

INCOMPATIBILITY

Natural Resources Commission; County Conservation Board. Iowa Code chs. 350; 455A; 456A; 461A; Iowa Code §§ 350.2, 350.4, 350.7, 350.11, 455A.5, 455A.19; 456A.19, 461A.32, 461A.79. The common law doctrine of incompatibility of office does not prohibit dual appointment to the Natural Resources Commission and to a county conservation board. Iowa Code section 455A.5(1) does not authorize a member of the NRC to serve on a county conservation board, but supports the conclusion that the common law doctrine of incompatibility does not prohibit these dual appointments. A person who is appointed to both public offices should be careful to avoid the conflicts of interest that will likely arise. (Pottorff to Black, State Senator, 9-15-00) #00-9-1

IOWA PUBLIC OFFICIALS ACT; COMMUNITY COLLEGES

Authority of the Iowa Ethics and Campaign Board over employees and officials of community colleges. Iowa Code §§ 68B.26, 68B.32, 68B.32B, 68B.35 (1999). Status of community colleges as state agencies or political subdivisions; status of employees of community colleges as employees of the executive branch. Iowa Ethics and Campaign Disclosure Board has authority to process complaints against employees of community colleges to require personal financial disclosure statements of certain community college employees. (Johnson to McKinley, Iowa Ethics and Campaign Disclosure Board, 9-21-00) #00-9-3

MUNICIPALITIES; ZONING

Initiation of zoning amendments and moratorium on re-filing petitions. Iowa Code §§ 335.8, 414.4, 414.5, 414.6 (1999). Chapter 414 neither prohibits a city council from proposing amendments to city zoning ordinances nor prohibits it from imposing a one-year moratorium on re-filing petitions for zoning changes, while imposing no such limitation on proposals initiated by the city council on its own motion or by the zoning commission. (Kempkes to May, State Representative, 8-22-00) #00-8-5(L)

1999 IOWA CODE

OPINION

12B.10	00-8-2(L)
12C.1	00-8-2(L)
28E.4	00-8-2(L)
29C.9	00-9-2(L)
29C.17	00-9-2(L)
68B.26	00-9-3
68B.32	00-9-3
68B.32B	00-9-3
68B.35	00-9-3
173.1	00-8-7
173.2	00-8-7
229.6	00-8-6(L)
229.7	00-8-6(L)
229.44	00-8-6(L)
279.32	00-8-3(L)
331.215	00-8-3(L)
331.381	00-9-2(L)
331.401	00-8-2(L)
	00-8-3(L)
331.555	00-8-2(L)
335.8	00-8-5(L)
350.2	00-9-1
350.4	00-8-2(L)
	00-9-1
350.6	00-8-2(L)
350.7	00-8-2(L)
	00-9-1
350.11	00-9-1
372.13	00-8-1(L)
	00-8-3(L)
384.37	00-8-4
384.38	00-8-4
384.45	00-8-4
414.4	00-8-5(L)
414.5	00-8-5(L)
414.6	00-8-5(L)
441.2	00-8-3(L)
455A.5	00-9-1
455A.19	00-9-1
456A.19	00-9-1
461A.32	00-9-1
461A.79	00-9-1
602.8102	00-8-6(L)

ACTS OF THE 78TH G.A., 2ND SESSION

OPINION

H.F. 2555, § 3

00-9-4(L)

S.F. 2452, § 4

00-9-4(L)

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

PRSR STD
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195
