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CAPITOL BUILDING
DES MOINES, IA

IOWA ADMINISTRATIVE BULLETIN

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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.

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Dec. 22 '00	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5	Jan. 24	Feb. 13	Feb. 28	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 19	Feb. 7	Feb. 27	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 2	Feb. 21	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 16	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sept. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sept. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	May 25	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	June 22	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
May 25	June 13	July 3	July 18	July 20	Aug. 8	Sept. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sept. 26	Dec. 24
June 22	July 11	July 31	Aug. 15	Aug. 17	Sept. 5	Oct. 10	Jan. 7 '02
July 6	July 25	Aug. 14	Aug. 29	Aug. 31	Sept. 19	Oct. 24	Jan. 21 '02
July 20	Aug. 8	Aug. 28	Sept. 12	Sept. 14	Oct. 3	Nov. 7	Feb. 4 '02
Aug. 3	Aug. 22	Sept. 11	Sept. 26	Sept. 28	Oct. 17	Nov. 21	Feb. 18 '02
Aug. 17	Sept. 5	Sept. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '02
Aug. 31	Sept. 19	Oct. 9	Oct. 24	Oct. 26	Nov. 14	Dec. 19	Mar. 18 '02
Sept. 14	Oct. 3	Oct. 23	Nov. 7	Nov. 9	Nov. 28	Jan. 2 '02	Apr. 1 '02
Sept. 28	Oct. 17	Nov. 6	Nov. 21	Nov. 23	Dec. 12	Jan. 16 '02	Apr. 15 '02
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Nov. 23	Dec. 12	Jan. 1 '02	Jan. 16 '02	Jan. 18 '02	Feb. 6 '02	Mar. 13 '02	June 10 '02
Dec. 7	Dec. 26	Jan. 15 '02	Jan. 30 '02	Feb. 1 '02	Feb. 20 '02	Mar. 27 '02	June 24 '02
Dec. 21	Jan. 9 '02	Jan. 29 '02	Feb. 13 '02	Feb. 15 '02	Mar. 6 '02	Apr. 10 '02	July 8 '02
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20 '02	Apr. 24 '02	July 22 '02

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
26	Friday, June 8, 2001	June 27, 2001
1	Friday, June 22, 2001	July 11, 2001
2	Friday, July 6, 2001	July 25, 2001

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.

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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 a special meeting on Tuesday, June 5, 2001, at 10 a.m. and Wednesday, June 6, 2001, at 9 a.m. in Senate Committee Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

CORRECTIONS DEPARTMENT[201]

Violator/shock probation programs, 20.18, Filed **ARC 0698B** 5/30/01

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COMMERCE DEPARTMENT[181]"umbrella"

Uniform waiver and variance rules, ch 23, Notice **ARC 0672B** 5/16/01

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ELDER AFFAIRS DEPARTMENT[321]

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ENVIRONMENTAL PROTECTION COMMISSION[567]

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Removal and disposal of polychlorinated biphenyls (PCBs) from white goods prior to processing, ch 118, Notice **ARC 0668B** 5/16/01

HUMAN SERVICES DEPARTMENT[441]

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Food stamp program—claims, 65.21(4) to 65.21(6), Filed **ARC 0682B** 5/30/01

Medicaid—payment for drugs used for weight loss, 78.1(2)"a"(2) and (3), 78.28(1)"d"(20) Filed **ARC 0683B** 5/30/01

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Quality-based inspection, ch 66, Filed **ARC 0695B** 5/30/01

MEDICAL EXAMINERS BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Fees, ch 8, Filed **ARC 0710B** 5/30/01

Permanent physician licensure, ch 9, 12.40(5), Filed **ARC 0708B** 5/30/01

Resident, special and temporary physician licensure, ch 10, Filed **ARC 0707B** 5/30/01

Continuing education and mandatory training for identifying and reporting abuse, ch 11, Filed **ARC 0709B** 5/30/01

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NATURAL RESOURCES DEPARTMENT[561]"umbrella"

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Nursing home administrator examiners, adopt ch 141; rescind ch 142; 143.6"3" and "5," 143.10(4)"b"; adopt chs 144, 145, <u>Filed</u> ARC 0704B	5/30/01
Speech pathology and audiology examiners, adopt chs 299, 300; rescind ch 302; 303.3(2)"g," 303.6, 303.10; adopt chs 304, 305, <u>Notice</u> ARC 0705B	5/30/01

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INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Contested cases; track and excursion boat licensees' responsibilities; occupational and vendor licensing; greyhound racing; thoroughbred and quarter horse racing; gambling games; accounting and cash control, 4.4(3), 4.7, 4.42(3), 4.48, 5.3, 5.4(4), 5.4(16), 5.5(8), 5.6(3), 6.2(1)"m," 6.2(5), 6.7, 6.8, 6.16(1), 7.1, 7.2(2), 7.2(2)"a," 7.2(3)"a" and "b," 7.2(4)"c," 7.3(1)"a," 7.3(3)"b" to "i," 7.3(4)"a" and "b," 7.3(5), 7.3(7)"a," 7.3(9)"b," 7.3(15)"a" to "c," 7.4(7), 7.5(2)"a," "e," "h," and "l," 7.7(1), 7.7(10), 7.7(12)"b," 7.9(2), 7.9(8)"a," 7.12(10), 7.14(2)"a," 7.14(3)"a," 10.1, 10.4(5)"b" and "d," 10.4(5)"i"(1) and (4), 10.4(5)"j," 10.4(8)"b"(3), 10.4(11)"j," 10.5(1)"a"(27), 10.5(2)"g," 10.5(2)"j"(3), 10.5(2)"r"(2) and (5), 10.5(2)"s," 10.5(2)"v"(4)"4," 10.5(3)"a"(5), 10.6(2)"c"(1), 10.6(2)"e," "i" and "k," 10.6(6)"a" and "b," 10.6(7), 10.6(12), 10.6(18)"a"(1)"3," 10.7(1)"f," 10.7(2)"a," 10.7(3)"a," 11.4(1), 11.13(3)"d"(1), 12.3(1)"b"(1) and (3), 12.3(1)"c" and "d," 12.3(2), 12.13, 12.14, 12.16(2), <u>Filed</u> ARC 0665B	5/16/01
Harness racing, ch 9, <u>Filed</u> ARC 0666B	5/16/01

REVENUE AND FINANCE DEPARTMENT[701]

- Audit of multilevel marketers, 4.1(4)"b"(1), Notice **ARC 0702B** 5/30/01
- Tax exemptions—dyed fuel, motor fuel, cigarettes and tobacco, 68.3, 68.8(18), 82.4(5)"b,"
83.4, 83.10, 83.11(2), 84.2, Filed **ARC 0701B** 5/30/01
- Tobacco master settlement agreement, ch 85, Notice **ARC 0674B** 5/16/01

SECRETARY OF STATE[721]

- Waiver and variance rules, ch 10, Filed **ARC 0664B** 5/16/01

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

- Waiver or variance of rules, ch 8, Filed **ARC 0690B** 5/30/01

STATUS OF WOMEN DIVISION[435]

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

- Iowans in transition, 5.1, Filed **ARC 0673B** 5/16/01

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

- Uniform waiver and variance rules, ch 16, rescind 17.6, Filed **ARC 0716B** 5/30/01

TRANSPORTATION DEPARTMENT[761]

- Scenic byway program, 132.1(2), 132.1(3), 132.5(1), 132.5(2), 132.5(4) to 132.5(7), Filed **ARC 0680B** 5/30/01
- RISE program, 163.1, 163.8(2)"i," 163.9(2)"h," 163.9(6)"c," 163.11(2)"a," Notice **ARC 0662B** 5/16/01
- Vehicle registration and certificate of title; salvage, 400.3(2), 400.7, 400.7(2), 4007.(4)"f" to "j,"
400.7(10), 400.13(3)"b," 400.13(5), 400.19(1), 400.19(2), 400.44(2), 400.45(2),
400.45(3), 400.60(2), 400.71, 405.3(2)"c," 405.6(3), Notice **ARC 0697B** 5/30/01
- General aviation hangar revolving loan fund, ch 718, Notice **ARC 0661B** 5/16/01

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]"umbrella"

- Service of filings on office of consumer advocate, 1.8(4)"c," Notice **ARC 0679B** 5/30/01

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

Senator Patricia M. Harper
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Waterloo, Iowa 50702

Senator JoAnn Johnson
1405 Court Street
Adel, Iowa 50003

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

Senator Sheldon Rittmer
3539 230th Street
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Representative Clyde Bradley
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Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative Marcella R. Frevert
3655 450th Avenue
Emmetsburg, Iowa 50536

Representative Janet Metcalf
12954 Oak Brook Drive
Urbandale, Iowa 50323

Representative Paul Scherrman
104 Michigan Avenue, Box 309
Farley, Iowa 52046

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
CREDIT UNION DIVISION[189]		
Uniform waiver and variance rules, ch 23 IAB 5/16/01 ARC 0672B	Conference Room, Suite 370 200 E. Grand Ave. Des Moines, Iowa	June 5, 2001 1 p.m.
DENTAL EXAMINERS BOARD[650]		
Expanded function dental assistant, 20.6(3) IAB 5/30/01 ARC 0720B	Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	June 19, 2001 3 to 4 p.m.
EDUCATION DEPARTMENT[281]		
Accreditation of schools and school districts, 12.1 to 12.3, 12.5, 12.8 IAB 5/30/01 ARC 0718B	Library, Wilson Junior High School 715 N. 21 St. Council Bluffs, Iowa	June 27, 2001 7 to 9:30 p.m.
	Media Center, Hoover High School 4800 Aurora Ave. Des Moines, Iowa	July 12, 2001 7 to 9:30 p.m.
	Media Center, West High School 3505 W. Locust Davenport, Iowa	August 13, 2001 7 to 9:30 p.m.
ELDER AFFAIRS DEPARTMENT[321]		
Assisted living programs, 27.1, 27.8, 27.9 IAB 5/30/01 ARC 0706B	Room 316 Hotel Fort Des Moines 10th and Walnut Des Moines, Iowa	June 19, 2001 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Discarded appliance demanufacturing, ch 118 IAB 5/16/01 ARC 0668B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 5, 2001 2 p.m.
HUMAN SERVICES DEPARTMENT[441]		
Price-based case-mix system for reimbursing non-state-owned nursing facilities for Medicaid recipients, 78.1(2), 78.3, 78.6(1), 78.9(10), 78.10(4), 78.11, 78.19(1), 78.24, 78.28(9), 79.1, 80.2(2), 81.1, 81.3(2), 81.6, 81.10, 81.20(1), 81.31 IAB 5/16/01 ARC 0671B	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	June 6, 2001 9 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

ICN Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	June 6, 2001 9 a.m.
Large Conference Room, Fifth Floor Bicentennial Bldg. 428 Western Davenport, Iowa	June 6, 2001 10 a.m.
Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	June 6, 2001 10 a.m.
Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	June 6, 2001 11 a.m.
Conference Room 3 120 E. Main Ottumwa, Iowa	June 6, 2001 10 a.m.
Fifth Floor 520 Nebraska St. Sioux City, Iowa	June 6, 2001 1:30 p.m.
Rooms 213/215 Pincrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	June 6, 2001 10 a.m.

INFORMATION TECHNOLOGY DEPARTMENT[471]

Informational technology operational standards, ch 12 IAB 5/30/01 ARC 0700B	Director's Conference Room Level B, Hoover State Office Bldg. Des Moines, Iowa	June 19, 2001 10 to 11 a.m.
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NATURAL RESOURCE COMMISSION[571]

Game management areas, 51.3(1), 51.5(3), 51.9, 51.10 IAB 5/2/01 ARC 0651B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 6, 2001 1 p.m.
State parks and recreation areas; state forest camping, 61.2 to 61.6, 61.9, 61.12, 62.7, 62.8 IAB 5/30/01 ARC 0715B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 21, 2001 9 a.m.
Unprotected nongame—garter snakes and timber rattlesnakes, 76.1(2) IAB 5/2/01 ARC 0652B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 6, 2001 1 p.m.

PERSONNEL DEPARTMENT[581]

Layoffs, reorganization or recall of employees, 10.2, 11.3, 14.2(2), 14.3(10) IAB 5/16/01 ARC 0675B	Grimes North Conference Room First Floor Grimes State Office Bldg. Des Moines, Iowa	June 5, 2001 9 a.m.
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PRESERVES, STATE ADVISORY BOARD FOR[575]

Organization and operation; management of state preserves, 1.1 to 1.4, 2.1, 2.2 IAB 5/30/01 ARC 0712B	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 21, 2001 10 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Dietetic examiners, chs 79, 80; 81.6, 81.10; chs 82, 83 IAB 5/30/01 ARC 0703B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 20, 2001 9 to 11 a.m.
Speech pathology and audiology examiners, chs 299, 300; rescind ch 302; 303.3(2), 303.6, 303.10; chs 304, 305 IAB 5/30/01 ARC 0705B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	June 20, 2001 9 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Waivers, variances, and exceptions, 5.1(5), 5.15, 10.1, 10.222 IAB 5/30/01 ARC 0717B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 22, 2001 10:30 a.m.
Criminal justice information— aggravated offense, 8.302(11) IAB 5/30/01 ARC 0676B (See also ARC 0677B herein)	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 22, 2001 9:30 a.m.
Fees for building code plan reviews, 16.131(2) IAB 5/30/01 ARC 0678B	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 22, 2001 10 a.m.

TRANSPORTATION DEPARTMENT[761]

RISE program—brownfield sites, 163.1, 163.8(2), 163.9, 163.11(2) IAB 5/16/01 ARC 0662B	Commission Conference Room 800 Lincoln Way Ames, Iowa	June 7, 2001 11 a.m. (If requested)
Vehicle registration and certificate of title; salvage, 400.3(2), 400.7, 400.8, 400.13, 400.19, 400.28, 400.44(2), 400.45, 400.60(2), 400.70, 400.71, 405.3(2), 405.6(3) IAB 5/30/01 ARC 0697B	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	June 21, 2001 10 a.m. (If requested)
General aviation hangar revolving loan fund, ch 718 IAB 5/16/01 ARC 0661B	Commission Conference Room 800 Lincoln Way Ames, Iowa	June 7, 2001 10 a.m. (If requested)

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]

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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]

INFORMATION TECHNOLOGY DEPARTMENT[471]

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 0720B

DENTAL EXAMINERS BOARD[650]

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 Dental Examiners hereby gives Notice of Intended Action to amend Chapter 20, "Dental Assistants," Iowa Administrative Code.

The purpose of the proposed amendment is to change the eligibility criteria for dental assistants applying for expanded function registration beginning July 1, 2002. The amendment eliminates the requirement that a person must have either two years of experience as a registered dental assistant or be a current certified dental assistant (CDA) with six months of dental assisting experience. The amendment would require that a person have either two years of clinical dental assisting experience or be a current CDA, without any additional clinical experience. To receive the CDA credential, a person must already have a certain level of clinical experience in order to challenge the examination or have received clinical experience as part of the accredited dental assisting education program. Requiring two years of clinical dental assisting experience instead of two years of experience as a registered dental assistant will allow persons who are not CDAs to begin applying for registration in expanded functions in the year 2002 instead of 2003. In addition, the change makes the requirement consistent with the level of experience needed to challenge the Dental Assisting National Board CDA exam.

This amendment is subject to waiver or variance pursuant to 650—Chapter 7.

Any interested person may make written comments or suggestions on the proposed amendment on or before June 19, 2001. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may also be sent to jhart@bon.state.ia.us.

Also, there will be a public hearing on June 19, 2001, from 3 to 4 p.m. in the Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. 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 person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

This amendment was approved at the April 26, 2001, regular meeting of the Board of Dental Examiners.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 153.

The following amendment is proposed.

Amend subrule 20.6(3), paragraph "a," as follows:

a. To meet the qualifications of expanded function dental assistant, applicants must:

(1) Have two years of *clinical dental assisting* experience as a registered dental assistant; or

(2) Be a current certified dental assistant as defined by the Dental Assisting National Board with six months of dental assisting experience; and

(3) Have successfully completed a formal program in one or more expanded functions within the previous two years of application as an expanded function dental assistant or documentation of equivalent out-of-state registration or education.

ARC 0718B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 12, "Accreditation of Schools and School Districts," Iowa Administrative Code.

The proposed amendments create an accreditation process that helps to ensure that all students, regardless of their background, achieve at high levels and that schools and school districts provide welcoming and supportive learning environments for all students.

These amendments reflect statutory provisions, and because of their relationship to civil rights legislation, a waiver of this rule might conflict with state and federal law.

Any interested party may make written suggestions or comments on the proposed amendments on or before August 13, 2001. Written materials should be directed to Tom Andersen, Bureau of Administration and School Improvement Services, Iowa Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by fax (515)281-7700, or by E-mail to tom.andersen@ed.state.ia.us. Persons who wish to convey their views orally should contact the Bureau of Administration and School Improvement Services at (515)281-8170 or at the Bureau offices on the second floor of the Grimes State Office Building.

Public hearings on the proposed amendments will be held as follows:

The first hearing will be held on June 27, 2001, from 7 to 9:30 p.m. in the Library, Wilson Junior High School, 715 North 21st Street, Council Bluffs, Iowa.

The second hearing will be held on July 12, 2001, from 7 to 9:30 p.m. in the Media Center, Hoover High School, 4800 Aurora Avenue, Des Moines, Iowa.

The third hearing will be held on August 13, 2001, from 7 to 9:30 p.m. at the Media Center, West High School, 3505 West Locust, Davenport, Iowa.

At the hearings, 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 person who intends to attend a public hearing and requires special accommodations for specific needs should contact the Bureau of Administration and School Improvement Services at (515)281-8170 at least five business days prior to the hearing date.

These amendments are intended to implement Iowa Code sections 19B.11, 19B.12, 216.9, 256.7(21), 279.8, 280.3, and 729A.1; and 20 U.S.C. Section 794, 20 U.S.C. Sections 1400 ff., 20 U.S.C. Section 1681, 20 U.S.C. Sections

EDUCATION DEPARTMENT[281](cont'd)

1701-1721, 42 U.S.C. Sections 2000 c and d, and 42 U.S.C. Section 11432.

The following amendments are proposed.

ITEM 1. Amend **281—Chapter 12**, Preamble, as follows:

PREAMBLE

The goal for the early childhood through twelfth grade educational system in Iowa is to improve the learning, achievement, and performance *and citizenship* of all students so they become successful members of a community and workforce. It is expected that each school and school district shall continue to improve its *inclusive* educational system so that ~~more~~ *all* students will increase their learning, achievement, and performance.

Accreditation focuses on an ongoing school improvement process for schools and school districts. However, general accreditation standards are the minimum requirements that must be met by an Iowa public school district to be accredited. A public school district that does not maintain accreditation shall be merged, by the state board of education, with one or more contiguous school districts as required by Iowa Code subsection 256.11(12). A nonpublic school must meet the general accreditation standards if it wishes to be designated as accredited for operation in Iowa.

General accreditation standards are intended to fulfill the state's responsibility for ~~making available~~ *providing* an appropriate educational program ~~that has in a safe and civil learning environment~~ with high expectations for all students in Iowa. The accreditation standards ensure that each child has access to an educational program that meets the needs and abilities of the child regardless of ~~race, color, national origin, gender, disability, religion, creed, marital status, geographic location, or socioeconomic background~~ *color, creed, disability, gender, marital status, national origin, race, religion, sexual orientation, or socioeconomic status*.

With local community input *and collaboration*, school districts and accredited nonpublic schools shall incorporate accountability for student achievement into comprehensive school improvement plans designed to increase the learning, achievement, and performance *and citizenship* of all students. As applicable, and to the extent possible, comprehensive school improvement plans shall consolidate federal and state program goal setting, planning, and reporting requirements. Provisions for multicultural and gender fair education, technology integration, global education, gifted and talented students, at-risk students, students with disabilities, and the professional development of all staff shall be incorporated, as applicable, into the comprehensive school improvement plan. See subrules 12.5(8) to 12.5(13), 12.7(1), and 12.8(1).

ITEM 2. Amend subrule 12.1(1), introductory paragraph, as follows:

12.1(1) Schools and school districts governed by general accreditation standards. These standards govern the accreditation of all prekindergarten, if offered, or kindergarten through grade 12 school districts operated by public school corporations and the accreditation, if requested, of prekindergarten or kindergarten through grade 12 schools operated under nonpublic auspices. *Schools and school districts shall take action to ensure that all students are provided with equitable opportunity in programs, courses, and activities and that all students are free from discriminatory acts and practices on the basis of color, creed, disability, gender, marital status, national origin, race, or religion. Each school district*

Schools and school districts shall take affirmative steps to integrate students in attendance centers, educational programs, and courses, and activities on the basis of disability, gender, national origin, race and socioeconomic status as stated in subrules 12.1(12) and 12.5(20). Schools and school districts shall collect and annually review district, attendance center, and course enrollment data on the basis of race, national origin, gender, and disability. Equal opportunity in programs shall be provided to all students regardless of race, color, national origin, gender, disability, religion, or creed.

Nothing in ~~this rule~~ *these rules* shall be construed as prohibiting any bona fide religious institution from imposing qualifications based upon religion when such qualifications are related to a bona fide religious purpose.

ITEM 3. Adopt ~~new~~ subrule 12.1(12) as follows:

12.1(12) Inclusive schools. Schools and school districts shall take affirmative steps to include students in attendance centers on the basis of disability, gender, national origin, race and socioeconomic status. These steps shall be taken to help ensure high levels of achievement for all students. Schools and school districts shall collect and annually review district and attendance center enrollments on the basis of disability, gender, race, and socioeconomic status in order to monitor schools' and school districts' progress toward inclusion.

The affirmative steps to increase student achievement by including students shall be an integral part of long-range and annual planning and shall include the following:

a. Facilities and student enrollment. Schools and school districts shall consider the impact that decisions related to construction, remodeling and closing schools, the drawing of attendance boundaries, the development of vertical feeder systems, student transportation, intradistrict transfer policies, the placement of specialized programs and services, and access to technological resources will have on the isolation of students on the basis of disability, gender, national origin, race, or socioeconomic status.

b. Resource allocation. Schools and school districts shall ensure the equitable distribution of resources across all geographic areas of the school district. Equitable does not necessarily mean equal resources. It means the distribution of resources necessary to achieve the same student learning goals in every school attendance center. Resources means the assets, financial and nonfinancial, available to a school or school district. Examples of resource allocation that do not affect finances include the use of volunteers, the reassignment of more experienced teachers, and the use of federal and community resources.

c. Educational alternatives. Schools and school districts shall provide educational alternatives that create opportunities for students, parents, and families to make voluntary, informed choices to participate in inclusive schools and inclusive educational programs. Alternatives could include, but are not limited to, extended school year, block scheduling, and magnet programs within individual schools in the arts, science and technology, foreign language, multicultural/international studies, business, speech and writing.

d. Community outreach. Schools and school districts shall engage the community, parents, family members, and students from diverse backgrounds in planning and implementing integration strategies within the context of the broader involvement of the community in school improvement as required in paragraph 12.8(1)"a." Schools and school districts are strongly encouraged to communicate and collaborate with community housing authorities, business,

EDUCATION DEPARTMENT[281](cont'd)

labor, faith-based organizations, health and human services providers, other governmental agencies, the media, and higher education representatives within the community.

e. Climate and student support services. Schools and school districts shall implement strategies for making schools welcoming and supportive for diverse learners as an integral part of the school improvement process.

f. Collaboration. Collaboration to implement joint strategies that contribute to better understanding and relationships among students from diverse backgrounds is strongly encouraged between:

- (1) Desegregating school districts and the school districts contiguous to them;
- (2) Racially isolated school districts and the school districts contiguous to them; and
- (3) Inclusive attendance centers and isolated attendance centers within the same school district.

If, after the first five of the above affirmative steps have been taken to include students in attendance centers on the basis of disability, national origin, race, and socioeconomic status, isolated attendance centers still exist, schools and school districts shall implement the steps outlined in subrule 12.8(1).

ITEM 4. Amend rule **281—12.2(256)** as follows:

Amend the following definitions:

“Comprehensive school improvement plan” means a design that shall describe how the school or school district will increase student learning, achievement, and performance *as well as foster citizenship skills for all students*. ~~This ongoing improvement design may address more than student learning, achievement, and performance.~~

“School improvement advisory committee” means a committee, as defined in Iowa Code section 280.12, that is appointed by the board. Committee membership shall include students, parents, teachers, administrators, and representatives from the local community which may include business, industry, labor, community agencies, higher education, or other community constituents. To the extent possible, committee membership shall have balanced representation of the following: ~~race, gender, national origin, and disability~~ *disability, gender, national origin and race*. The school improvement advisory committee as defined by Iowa Code section 280.12 and the board are also part of, but not inclusive of, the local community.

“Subgroups” means a subset of the student population that has a common characteristic. Subgroups include, but are not limited to, ~~gender, race, students with disabilities, and disability~~, *English language learner, gender, race, or socioeconomic status*.

Adopt the following **new** definitions in alphabetical order:

“Diversity” means the variety of characteristics that make individuals unique including age, color, creed, disability, gender, marital status, national origin, race, religion, sexual orientation, and socioeconomic status.

“English language learner” means a student whose primary language is one other than English and whose inability or limited ability to speak, write, or read English significantly impedes the student’s educational progress and achievement.

“Harassment” means verbal, nonverbal, or physical conduct based on an employee’s actual or perceived age, or a student’s or employee’s color, creed, disability, gender, marital status, national origin, race, religion, sexual orientation, or socioeconomic status and which has the purpose or effect of substantially interfering with a student’s educational per-

formance or an employee’s employment or of creating an intimidating, hostile, or abusive educational or employment environment.

“Inclusion” means the acts of a school or school district to welcome, physically include, and provide supportive learning and working environments for all students and employees regardless of their age (age applies to employees only), color, creed, disability, gender, marital status, national origin, race, religion, sexual orientation, or socioeconomic status.

“Sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person’s employment or advancement or of a student’s participation in school programs or activities; or
2. Submission to or rejection of such conduct by an employee or student is used as a basis for decisions affecting the employee or student; or
3. Such conduct has the purpose or effect of unreasonably interfering with an employee’s or student’s performance or creating an intimidating or hostile working or learning environment.

ITEM 5. Amend subrule 12.3(6) as follows:

12.3(6) Student responsibility and discipline. The board shall adopt student responsibility and discipline policies as required by Iowa Code section 279.8. The board shall involve parents, students, instructional and noninstructional professional staff, and community members in the development and revision of those policies where practicable or unless specific policy is mandated by legislation. The policies shall relate to the educational purposes of the school or school district. The policies shall include, but are not limited to, the following: attendance; use of tobacco; the use or possession of alcoholic beverages or any controlled substance; *student-to-student harassment*; harassment of or by ~~students and staff~~; violent, destructive, and seriously disruptive behavior; suspension, expulsion, emergency removal, weapons, and physical restraint; out-of-school behavior; participation in extracurricular activities; academic progress; and citizenship.

The policies shall ensure due process rights for students and parents, including consideration for students who have been identified as requiring special education programs and services.

The board shall also consider the potential, disparate impact of the policies on students because of ~~race, color, national origin, gender, disability, religion, creed, color, creed, disability, gender, national origin, race, religion, or socioeconomic background~~ *status*. *The board shall collect and analyze suspension and expulsion data on the basis of disability, gender, and race.*

The board shall publicize its support of these policies; its support of the staff in enforcing them; and the staff’s accountability for implementing them.

ITEM 6. Adopt **new** subrules 12.3(7) to 12.3(9) as follows and renumber existing subrules **12.3(7) to 12.3(9)** as **12.3(10) to 12.3(12)**:

12.3(7) Student discrimination and harassment. Schools and school districts shall develop policies and practices to ensure that students are free from discriminatory acts and practices on the basis of color, creed, disability, gender, marital status, national origin, race, or religion. Schools or school districts also shall develop policies and practices to ensure

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that students are free from harassment which is sexual in nature or based upon color, creed, disability, gender, marital status, national origin, race, religion, or sexual orientation.

12.3(8) Employee discrimination and harassment. Schools and school districts shall develop policies and practices to ensure that employees and applicants for employment are free from discriminatory acts and practices on the basis of age, color, creed, disability, gender, marital status, national origin, race, or religion.

Schools and school districts also shall develop policies and practices to ensure that all employees and applicants for employment are free from harassment which is sexual in nature or based upon age, color, creed, disability, gender, marital status, national origin, race, religion, or sexual orientation.

12.3(9) Staff diversity. School districts shall take steps to hire and retain employees of diverse backgrounds so as to provide role models and better ensure high academic achievement for all students as required by Iowa Code section 19B.11.

ITEM 7. Amend subrule 12.5(8) as follows:

12.5(8) Multicultural and gender fair approaches to the educational program. The board shall establish a policy to ensure that ~~students are free from discriminatory practices in the educational program as required by Iowa Code section 256.11~~ *multicultural, gender fair approaches are used across the entire educational program.* In developing or revising the policy, parents, students, instructional and noninstructional staff, and community members *from diverse backgrounds* shall be involved. Each school or school district shall incorporate multicultural and gender fair goals for the educational program into its comprehensive school improvement plan. ~~Incorporation shall include the following:~~

~~a. Multicultural approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of diverse cultural groups, including race, color, national origin, gender, disability, religion, creed, and socioeconomic background. The contributions and perspectives of Asian Americans, African Americans, Hispanic Americans, American Indians, European Americans, and persons with disabilities shall be included in the program.~~

~~b. Gender fair approaches to the educational program. These shall be defined as approaches which foster knowledge of, and respect and appreciation for, the historical and contemporary contributions of women and men to society. The program shall reflect the wide variety of roles open to both women and men and shall provide equal opportunity to both sexes.~~

Schools and school districts shall incorporate into their instructional strategies and curriculum multicultural gender fair approaches to the educational program which shall be defined as approaches which foster knowledge of the historical and contemporary contributions of men and women from diverse racial and ethnic groups and persons with disabilities. The program shall also include the wide variety of career and life roles available to men and women from diverse racial and ethnic groups and persons with disabilities.

In addition, schools and school districts shall incorporate into their instructional strategies and curriculum content and activities related to the responsibilities, rights, and respect for diversity which are necessary for effective citizenship in a diverse community and global economy.

ITEM 8. Adopt **new** subrule 12.5(19) as follows:

12.5(19) Homeless students. Each board shall have a policy and implement practices that ensure that homeless children of school age (as defined in rule 281—33.2(256)) have access to the same free and appropriate education as is provided to other children including access to transportation; that any residency requirements do not act as barriers to the enrollment, attendance, or success of homeless children in schools; that homelessness alone is not used as a reason to separate students from the mainstream school environment; and that homeless children have access to education and the necessary services to provide them with the opportunity to meet the same student performance standards to which all students are held.

ITEM 9. Adopt **new** subrule 12.5(20) as follows:

12.5(20) Isolated educational programs. Schools and school districts shall take affirmative steps to include students in educational programs, courses, and activities on the basis of disability, gender, national origin, and race. Schools and school districts shall collect and annually review educational program and course enrollment data on the basis of disability, gender, and race in order to monitor schools' and school districts' progress toward inclusion. For the purposes of these rules, a "disability isolated educational program" is an educational program, course, or activity in which the enrollment of students with disabilities is ten percentage points greater or less than the enrollment of students with disabilities in the school they attend. A "gender isolated educational program" is an educational program, course, or activity in which the enrollment exceeds 80 percent for either males or females. However, athletics and sex education programs are exempted by federal law from compliance (34 CFR 106.41; 20 U.S.C. 1681; 34 CFR 106.9). A "racially isolated educational program" is an educational program, course, or activity in which the aggregate enrollment of minority students is ten percentage points greater or less than the aggregate enrollment of minority students in the school they attend.

Having an isolated program as defined in this subrule does not, in and of itself, constitute noncompliance with these rules. When educational programs, courses, and activities are identified as isolated on the basis of disability, gender, and race, schools and school districts shall:

a. Review their student assignment and program policies, practices, and content to ensure that they are not causing or contributing to the isolation;

b. Take specific steps to encourage integration or the enrollment of students who have not traditionally been included or involved; and

c. Demonstrate, in the case of disability isolation when the isolation is found to be due to student assignment and program policies, that the degree of isolation is consistent with the "least restrictive learning environment" for the students involved and that the existing isolation is conducive to improved student learning.

ITEM 10. Amend subrule 12.8(1) as follows:

12.8(1) Comprehensive school improvement. The general accreditation standards are minimum, uniform requirements. However, the department encourages schools and school districts to go beyond the minimum with their work toward ongoing improvement. As a means to this end, local comprehensive school improvement plans shall be specific to a school or school district and designed, at a minimum, to increase the learning, achievement, and performance of all students *in inclusive learning environments.*

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As a part of ongoing improvement in its educational system, the board shall adopt a written comprehensive school improvement plan designed for continuous school, parental, and community involvement in the development and monitoring of a plan that is aligned with school or school district determined needs.

If, after the affirmative steps outlined in subrule 12.1(12) have been implemented, isolated attendance centers still exist, the existence of such isolated attendance centers shall not, in and of itself, constitute noncompliance with these rules. For the purposes of these rules, a "disability isolated attendance center" means an attendance center in which the enrollment of students with disabilities is more than 20 percentage points greater than the percentage of students with disabilities enrolled in the district as a whole. A "racially isolated attendance center" means an attendance center in which the aggregate minority enrollment of the attendance center is more than 20 percentage points greater than the aggregate minority enrollment of the district as a whole. A "socioeconomically isolated attendance center" means an attendance center in which the enrollment of students who are eligible for free or reduced-price lunches exceeds 75 percent. However, if within such isolated attendance centers there are significantly higher percentages of students achieving at the "low" performance level than there are in the district as a whole, the school or school district shall take the following steps in its comprehensive school improvement plan:

1. Review its student assignment policies and practices to ensure that they are not causing or contributing to the isolation;

2. Take specific steps to encourage enrollment of students who have traditionally not been enrolled in the attendance center;

3. In the case of disability isolation caused by student assignment or program policies, show that the degree of isolation is consistent with the "least restrictive learning environment" for the students involved and that the existing isolation is contributing to improved student learning.

4. Develop a school improvement plan for each isolated attendance center that contains annual improvement goals and activities;

5. Allocate existing resources in a manner that will assist the students in isolated attendance centers to progress toward the same academic achievement goals that have been set for other attendance centers in the district; and

6. Provide ongoing documentation in the school's or school district's annual progress report to show that the steps that have been implemented have been effective in reducing the differences in achievement that may exist between the isolated attendance centers and other attendance centers in the district.

Comprehensive school improvement plans The plan shall incorporate, to the extent possible, the consolidation of federal and state planning, goal setting, and reporting requirements. The plan shall contain, but is not limited to, the following components:

a. Community involvement.

(1) Local community. The school or school district shall involve the local community in decision-making processes as appropriate. The school or school district shall seek input from the local community about, but not limited to, the following elements at least once every five years:

1. Statement of philosophy, beliefs, mission, or vision;
2. Major educational needs; and
3. Student learning goals.

(2) School improvement advisory committee. To meet requirements of Iowa Code section 280.12(2), the board shall appoint and charge a school improvement advisory committee to make recommendations to the board. Based on the committee members' analysis of the needs assessment data, ~~they~~ *the committee* shall make recommendations to the board about the following components:

1. Major educational needs;
2. Student learning goals; and
3. Long-range goals that include, but are not limited to, the state indicators that address reading, mathematics, and science achievement.

(3) At least annually, the school improvement advisory committee shall also make recommendations to the board with regard to, but not limited to, the following:

1. Progress achieved with the annual improvement goals for the state indicators that address reading, mathematics, and science in subrule 12.8(3);
2. Progress achieved with other locally determined core indicators; and

3. Annual improvement goals for the state indicators that address reading, mathematics, and science achievement.

b. Data collection, analysis, and goal setting.

(1) Policy. The board shall adopt a policy for conducting ongoing and long-range needs assessment processes. This policy shall ensure involvement of and communication with the local community regarding its expectations for adequate preparation for all students as responsible citizens and successful wage earners. The policy shall include provisions for keeping the local community regularly informed of progress on state indicators as described in subrule 12.8(3), other locally determined indicators within the comprehensive school improvement plan as required by Iowa Code section 280.12, and the methods a school district will use to inform kindergarten through grade 3 parents of their individual child's performance biannually as described in ~~1999 Iowa Acts, House File 743~~ *Iowa Code chapter 256D*. The policy shall describe how the school or school district shall provide opportunities for local community feedback on an ongoing basis.

(2) Long-range data collection and analysis. The long-range needs assessment process shall include provisions for collecting, analyzing, and reporting information derived from local, state, and national sources. The process shall include provisions for reviewing information acquired over time on the following:

1. State indicators and other locally determined indicators;
2. Locally established student learning goals; and
3. Specific data collection required by federal and state programs.

Schools and school districts shall also collect information about additional factors influencing student achievement which may include, but are not limited to, demographics, attitudes, health, and other risk factors.

(3) Long-range goals. The board, with input from its school improvement advisory committee, shall adopt long-range goals to improve student achievement in at least the areas of reading, mathematics, and science. *When significant differences exist between and among subgroups on state indicator achievement data, the school or school district shall establish goals to close the achievement gaps.*

(4) Annual data collection and analysis. The ongoing needs assessment process shall include provisions for collecting and analyzing annual assessment data on the state in-

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dicators, other locally determined indicators, and locally established student learning goals.

(5) Annual improvement goals. The board, with input from its school improvement advisory committee, shall adopt annual improvement goals based on data from at least one districtwide assessment. The goals shall describe desired annual increase in the curriculum areas of, but not limited to, mathematics, reading, and science achievement for all students, for particular subgroups of students, or both. Annual improvement goals may be set for the early intervention program as described in subrule 12.5(18), other state indicators, locally determined indicators, locally established student learning goals, other curriculum areas, future student employability, or factors influencing student achievement.

c. Content standards and benchmarks.

(1) Policy. The board shall adopt a policy outlining its procedures for developing, implementing, and evaluating its total curriculum. The policy shall describe a process for establishing content standards, benchmarks, performance levels, and annual improvement goals aligned with needs assessment information.

(2) Content standards and benchmarks. The board shall adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Standards and benchmarks may be adopted for other curriculum areas defined in 281—Chapter 12, Division V. The comprehensive school improvement plan submitted to the department shall contain, at a minimum, content standards for reading, mathematics, and science. The educational program as defined in 281—Chapter 12, Division II, shall incorporate career education, multicultural and gender fair education, technology integration, global education, higher-order thinking skills, learning skills, and communication skills as outlined in subrules 12.5(7), 12.5(8), 12.5(10), and 12.5(11), and subparagraph 12.8(1)“c”(1).

d. Determination and implementation of actions to meet the needs. The comprehensive school improvement plan shall include actions the school or school district shall take districtwide in order to accomplish its long-range and annual improvement goals as required in Iowa Code subsection 280.12(1)“b.”

(1) Actions shall include, but are not limited to, addressing the improvement of curricular and instructional practices to attain the long-range goals, annual improvement goals, and the early intervention goals as described in subrule 12.5(18). *Specific actions shall be taken to decrease any significant gaps that exist in achievement data for subgroups as defined in subrule 12.8(3).*

(2) A school or school district shall document consolidation of state and federal resources and requirements, as appropriate, to implement the actions in its comprehensive school improvement plan. State and federal resources shall be used, as applicable, to support implementation of the plan.

(3) A school or school district may have building-level action plans, aligned with its comprehensive school improvement plan *in attendance centers other than those that are defined as isolated*. These may be included in the comprehensive school improvement plan or kept on file at the local level.

e. Evaluation of the comprehensive school improvement plan. A school or school district shall develop strategies to collect data and information to determine if the plan has accomplished the goals for which it was established.

f. Assessment of student progress. Each school or school district shall include in its comprehensive school improvement plan provisions for districtwide assessment of student progress for all students. The plan shall identify valid and reliable student assessments aligned with local content standards. These assessments are not limited to commercially developed measures. School districts receiving early intervention funding described in subrule 12.5(18) shall provide for diagnostic reading assessments for kindergarten through grade 3 students as described in ~~1999 Iowa Acts, House File 743~~ *Iowa Code chapter 265D*.

(1) State indicators. Using at least one districtwide assessment, a school or school district shall assess student progress on the state indicators in, but not limited to, reading, mathematics, and science as specified in subrule 12.8(3). At least one districtwide assessment shall allow for, but not be limited to, the comparison of the school or school district's students with students from across the state and in the nation in reading, mathematics, and science. A school or school district shall use additional assessments to measure progress on locally determined content standards in at least reading, mathematics, and science.

(2) Performance levels. A school or school district shall establish at least three performance levels on at least one districtwide valid and reliable assessment in the areas of reading and mathematics for at least grades 4, 8, and 11 and science in grades 8 and 11 or use the achievement levels as established by the Iowa Testing Program to meet the intent of this subparagraph (2).

g. Assurances and support. A school or school district shall provide evidence that its board has approved and supports the five-year comprehensive school improvement plan and any future revisions of that plan. This assurance includes the commitment for ongoing improvement of the educational system.

ITEM 11. Amend subrule 12.8(3) as follows:

12.8(3) Annual reporting requirements. A school or school district shall, at minimum, report annually to its local community about the progress on the state indicators and other locally determined indicators.

a. State indicators. A school or school district shall collect data on the following indicators for reporting purposes:

(1) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher reading status using at least three achievement levels and ~~by gender, race, socioeconomic status, students with disabilities by disability, English language learner status, gender, race, socioeconomic status,~~ and other subgroups as required by state or federal law.

(2) The percentage of all fourth, eighth, and eleventh grade students achieving proficient or higher mathematics status using at least three achievement levels and ~~for gender, race, socioeconomic status, students with disabilities by disability, English language learner status, gender, race, socioeconomic status,~~ and other subgroups as required by state or federal law.

(3) The percentage of all eighth and eleventh grade students achieving proficient or higher science status using at least three achievement levels.

(4) The percentage of students considered as dropouts for grades 7 to 12 ~~by gender, race, students with disabilities by disability, gender, and race,~~ and other subgroups as required by state or federal law.

(5) The percentage of high school seniors who intend to pursue postsecondary education/training.

EDUCATION DEPARTMENT[281](cont'd)

(6) The percentage of high school students achieving a score or status on a measure indicating probable postsecondary success. This measure should be the measure used by the majority of students in the school, school district, or attendance center who plan to attend a postsecondary institution.

(7) The percentage of high school graduates who complete a core program of four years of English-language arts and three or more years each of mathematics, science, and social studies.

b. Annual progress report. Each school or school district shall submit an annual progress report to its local community, its respective area education agency, and the department. That report shall be submitted to the department by September 15, 2000, and by September 15 every year thereafter. The report shall include, but not be limited to, the following information:

(1) Baseline data on at least one districtwide assessment for the state indicators described in subrule 12.8(3). Every year thereafter the school or school district shall compare the annual data collected with the baseline data. A school or school district is not required to report to the community about subgroup assessment results when a subgroup contains fewer than ten students at a grade level. A school or school district shall report districtwide assessment results for all enrolled and tuitioned-in students.

(2) Locally determined performance levels for at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. Student achievement levels as defined by the Iowa Testing Program may be used to fulfill this requirement.

(3) Long-range goals to improve student achievement in the areas of, but not limited to, reading, mathematics, and science.

(4) Annual improvement goals based on at least one districtwide assessment in, at a minimum, the areas of reading, mathematics, and science. One annual improvement goal may address all areas, or individual annual improvement goals for each area may be identified. When a school or school district does not meet its annual improvement goals for one year, it shall include in its annual progress report the actions it will take to meet annual improvement goals for the next school year.

(5) Data on multiple assessments for reporting achievement for all students in the areas of reading and mathematics by September 15, 2001, and for science by September 15, 2003.

(6) Results by individual attendance centers, as appropriate, on the state indicators as stated in subrule 12.8(3) and any other locally determined factors or indicators. An attendance center, for reporting purposes, is a building that houses students in grade 4 or grade 8 or grade 11.

(7) *Results by individual attendance centers that have been identified as isolated buildings as determined by subrule 12.8(1) regarding building-level student achievement goals.*

(7)(8) Progress with the use of technology as required by Iowa Code section 295.3. This requirement does not apply to accredited nonpublic schools.

(8)(9) School districts are encouraged to provide information on the reading proficiency of kindergarten through grade 3 students by grade level. However, all school districts receiving early intervention block grant funds shall report to the department the progress toward achieving their early intervention goals.

(9)(10) Other reports of progress as the director of the department requires and other reporting requirements as the result of federal and state program consolidation.

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ELDER AFFAIRS
DEPARTMENT[321]

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 231C.3, the Department of Elder Affairs hereby gives Notice of Intended Action to amend Chapter 27, “Assisted Living Programs,” Iowa Administrative Code.

The proposed amendments reorganize current structural requirements and add safety measures to be taken when items such as locks and kitchen appliances become hazardous to persons with cognitive impairment; add requirements for new construction where preexisting structural limitations do not exist to provide adequate space and a private bathroom to create a living unit that affords tenants privacy and dignity; and add language allowing modifications in the general assisted living structure requirements for assisted living programs serving persons with dementia to meet the therapeutic environmental needs of persons with dementia. The amendments to rule 321—27.9(231C) update cross references and add key life safety measures for assisted living programs serving persons with dementia, such as a procedure for responding to missing person reports and providing additional evacuation time by using slower-burning building materials.

The proposed amendments to Chapter 27 will be subject to waiver.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 19, 2001. Written comments should be directed to Beth Bahnson, HCBS Division Administrator, Department of Elder Affairs, 200 Tenth Street, Suite 300, Des Moines, Iowa 50309-3609.

Oral or written comments on these amendments may be submitted at a public hearing to be held at 10 a.m. on Tuesday, June 19, 2001, in Room 316, Hotel Fort Des Moines, Tenth and Walnut, Des Moines, Iowa. 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 these amendments.

Anyone who wishes to attend the hearing and has special requirements such as hearing, vision, mobility impairments, or other special needs should notify the Department of Elder Affairs no later than 4 p.m. on Thursday, June 14, 2001. Notice may be provided in writing at the address above or by telephone at (515)242-3325.

These amendments are intended to implement Iowa Code section 231C.3.

The following amendments are proposed.

ITEM 1. Amend rule 321—27.1(231C) by adopting the following new definition in alphabetical order:

“Dementia-specific assisted living program” means an assisted living program certified under this chapter that holds itself out as providing special care for persons with cognitive impairment or dementia, such as Alzheimer’s disease, in a dedicated setting.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

ITEM 2. Amend rule 321—27.8(231C) as follows:

321—27.8(231C) Structure.**27.8(1) General requirements.**

a. The structure of the assisted living program shall be designed and operated to meet the needs of the tenants.

~~27.8(2) b.~~ Building and grounds shall be well maintained, clean, safe and sanitary.

~~27.8(3) c.~~ Assisted living programs ~~may~~ shall have private dwelling units with a single-action lockable ~~doors~~ entrance door. An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock and shall do so if the presence of the lock presents a danger to the health and safety of the tenant. ~~and~~

d. Assisted living programs may have individual cooking facilities within the private dwelling units. Any assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances and shall do so if the presence of cooking appliances presents a danger to the health and safety of the tenant.

27.8(4) 27.8(2) Dwelling units.

a. For assisted living programs certified prior to July 4, 2001.

(1) Each dwelling unit shall have at least one room which will have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

~~b.~~ (2) Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.

~~c.~~ (3) A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.

~~27.8(5) (4)~~ The assisted living program shall have a minimum common area of 15 square feet per tenant.

b. For new construction built on or after July 4, 2001.

(1) Each dwelling unit shall have at least one room that will have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

(2) Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

(3) A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

(4) Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the water control and shall do so if the presence of the water control presents a danger to the health and safety of the tenant.

(5) The assisted living program shall have a minimum of 25 square feet of common space per tenant.

c. For a structure being converted to or rehabilitated for use as an assisted living program on or after July 4, 2001.

(1) Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

(2) Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

(3) A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

(4) The assisted living program shall have a minimum common area of 15 square feet per tenant dedicated for use by assisted living program tenants.

(5) Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facility.

27.8(3) Dwelling units in dementia-specific assisted living programs. Dementia-specific assisted living programs are excepted from 27.8(2) as follows:

a. For an assisted living program built in a family or neighborhood design.

(1) Each dwelling unit used for single occupancy shall have total square footage of not less than 150 square feet of floor area, excluding a bathroom;

(2) Each dwelling unit used for double occupancy shall have total square footage of not less than 250 square feet of floor area, excluding a bathroom; and

(3) The common areas shall be increased by the equivalent of the waived square footage.

b. Self-closing doors are not required for individual dwelling units or bathrooms.

c. Fire-retardant curtains are permitted in place of doors for bathroom doorways within the dwelling units.

ITEM 3. Amend rule 321—27.9(231C) as follows:

321—27.9(231C) Fire Life safety.

27.9(1) The assisted living program shall have a written emergency and fire safety procedure. An assisted living program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall also include written procedures regarding appropriate staff response if a tenant with cognitive impairment or dementia is missing.

27.9(2) The assisted living program ~~facility~~ program's structure and procedures shall meet the fire life safety standards of the National Fire Protection Association, 1994 edition, chapter 22 or 23 and referenced addenda, as designated for this category in 661 IAC 5.626(231C) and such other building and public safety codes as may apply to an assisted living program as defined in Iowa Code section 231C.1, including but not limited to the Americans with Disabilities Act, the Fair Housing Act, applicable regulations of the Occupational Safety and Health Administration, and the rules pertaining to accessibility contained in the Iowa State Building Code, administration section, division 7, and 661 IAC 18.

27.9(3) The assisted living program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall do so for tenants with cognitive impairment or at tenant request.

27.9(4) Each sleeping room shall have a minimum of 5.7 square feet of operable window in accordance with 661 IAC 5.52(1), exception 2. Waiver of this requirement must be granted by the state fire marshal or designee.

27.9(5) Reserved.

27.9(6) Dementia-specific assisted living programs built on or after July 4, 2001, shall also meet the following life safety criteria:

a. Have an operating alarm system connected to each door exiting the dementia-specific assisted living program; and

b. Be built at a minimum of Type V (111) construction.

27.9(7) Visual and audible fire alarms shall be installed in exit corridors and common spaces, and in tenant dwelling

ELDER AFFAIRS DEPARTMENT[321](cont'd)

units as required by the Americans with Disabilities Act. In cases where the visual or audible alarm located in a fully accessible dwelling unit of a dementia-specific assisted living program has been proven to be disruptive to the evacuation of the dwelling unit's tenant, the visual or audible alarm may be disabled. Disabling an alarm shall require documentation indicating why the tenant does not need the alarm in the dwelling unit and how the tenant will be safely evacuated. Said documentation shall be maintained in the record of the tenant occupying the accessible dwelling unit.

ARC 0688B

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 sections 234.6 and 238.16, the Department of Human Services proposes to amend Chapter 108, "Licensing and Regulation of Child-Placing Agencies," and Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

These amendments allow college graduates who have a bachelor's degree in social work to provide specified services under the Rehabilitative Treatment Services Program or through licensed child-placing agencies without meeting the experience requirements applicable to those who have a bachelor's degree in a human services field related to social work. Social work graduates have completed a practicum as part of their education that provides experience in these types of services.

The Board of Social Work Examiners has reviewed and approved these changes. These changes will expand the pool of qualified applicants for the providers of these services. Providers have indicated that locating qualified staff is an issue in the current economy.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit by expanding the pool of personnel qualified to provide these services.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 0687B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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 June 20, 2001.

These amendments are intended to implement Iowa Code sections 234.6 and 234.38 and Iowa Code chapter 238.

ARC 0689B

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 234.6, the Department of Human Services proposes to amend Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

This amendment is intended to clarify the independent audit of Rehabilitative Treatment and Supportive Service (RTSS) providers. The amendment also:

- Changes the name of the audit from "certified" audit to "independent" audit to more accurately reflect industry terminology.
- Clarifies which legal entity in a multi-entity organization must be audited.
- Simplifies the dollar standard when an audit is required by changing it from receipt of \$500,000 or more from the Department and a total revenue of \$1,000,000 from all sources to \$500,000 from the Department.
- Establishes a time frame for the completion of required independent audits and provides a method for extensions of this time frame if needed.
- Clarifies the audit format that should be used for not-for-profit and other types of providers.
- Clarifies which providers are not required to have an independent audit performed.
- Clarifies when a copy of any independent audit should be shared with the Department.

This amendment does not provide for waivers of the audit requirement for providers receiving more than \$500,000 from the Department because the audit is needed by the Department to verify the accuracy of billings and charges.

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 June 20, 2001.

This amendment is intended to implement Iowa Code sections 234.6 and 234.38.

The following amendment is proposed.

Rescind subrule 185.102(4) and adopt the following **new** subrule in lieu thereof:

185.102(4) Independent audits. When a provider has an independent audit conducted, the provider shall submit a copy of the independent audit report to the department within 30 days of receipt. A firm not related to the provider shall conduct the independent audit. The bureau of purchased services shall receive and maintain the report and provide a copy of the report to the bureau's fiscal consultant.

a. The department requires independent audits on an annual basis when a provider receives from the department \$500,000 or more from funds paid under contracts for rehabilitative treatment and supportive services and purchase of services for services provided in any state fiscal year.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The legal entity that has contracted with the department must be the subject of this independent audit.

1. When the legal entity that has contracted with the department is a subsidiary of another legal entity and a separate independent audit of the contracting entity is not performed because a consolidated or combined audit of the larger entity is required by American Institute of Certified Public Accountants (AICPA) standards, the department will accept the consolidated or combined audit if supplemental schedules that separately identify the financial statements of the contracting legal entity are provided.

2. When contract services are provided by a subsidiary entity of the contracting entity and a consolidated or combined audit is performed, the department may require supplemental schedules to separately identify the financial statements of the subsidiary entity and the contracting entity. If a consolidated or combined audit is not performed, the department may require that the subsidiary entity also be the subject of an independent audit.

(2) Required audits shall be completed within six months of the end of a provider's established fiscal year end for the provider's established fiscal year that ends during the state fiscal year in question. The bureau of purchased services may approve an extension of this time period upon written request from the provider.

(3) Not-for-profit providers shall ensure that the audit of their financial statements follows one of the uniform audit report formats recommended by the American Institute of Certified Public Accountants in the most recent version of the AICPA Audit and Accounting Guide for Not-for-Profit Organizations.

(4) Other types of providers shall ensure that the audit of their financial statements follows the formats prescribed by the AICPA for their specific industry.

b. Providers receiving less than \$500,000 from funds paid under contracts for rehabilitative treatment and supportive services and purchase of services for services provided in any state fiscal year annually are not required to have an independent audit. They shall submit a copy, as set forth in this rule, of any independent audit report they receive as a result of conducting an independent audit.

ARC 0700B**INFORMATION TECHNOLOGY
DEPARTMENT[471]****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 14B.105, the Information Technology Council hereby gives Notice of Intended Action to adopt new Chapter 12, "Information Technology Operational Standards," Iowa Administrative Code.

This chapter provides the manner in which the Information Technology Department may set operational standards, including system design, system integration, and interoperability, to ensure compatibility and interoperability of state government information technology systems, while at the

same time promoting effective technology alignment with enterprise strategies and programs.

Any interested person may make written suggestions or comments on the proposed new chapter on or before June 19, 2001. Such material should be directed to the Rules Administrator, Information Technology Department, Hoover State Office Building, Des Moines, Iowa 50319; fax (515) 281-6137.

Also, there will be a public hearing on June 19, 2001, from 10 to 11 a.m. in the Director's Conference Room, Information Technology Department, Level B, Hoover 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 rules. Persons with special needs should contact the Information Technology Department prior to the hearing if accommodations need to be made.

These rules are intended to implement Iowa Code chapter 14B.

The following **new** chapter is proposed.

**CHAPTER 12
INFORMATION TECHNOLOGY
OPERATIONAL STANDARDS**

471—12.1(14B) Definitions. As used in this chapter:

"Information technology" means computing and electronics applications used to process and distribute information in digital and other forms and includes information technology devices and information technology services.

"Information technology device" means equipment or associated software, including programs, languages, procedures, or associated documentation, used in operating the equipment which is designed for utilizing information stored in an electronic format. "Information technology device" includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

"Information technology services" means services designed to do any of the following:

1. Provide functions, maintenance, and support of information technology devices.
2. Provide services including, but not limited to, any of the following:
 - Computer systems application development and maintenance.
 - Systems integration and interoperability.
 - Operating systems maintenance and design.
 - Computer systems programming.
 - Computer systems software support.
 - Planning and security relating to information technology devices.
 - Data management consultation.
 - Information technology education and consulting.
 - Information technology planning and standards.
 - Establishment of local area network and workstation management standards.

"Nonparticipating entity" means the office of the governor or the office of an elective constitutional or statutory officer.

"Operational standards" means information technology standards, including system design, system integration, and interoperability, but not including procurement standards.

"Participating agency" means all executive branch agencies except the following:

INFORMATION TECHNOLOGY DEPARTMENT[471](cont'd)

1. The state board of regents and institutions operated under the authority of the state board of regents.
2. The public broadcasting division of the department of education.
3. The state department of transportation mobile radio network.
4. The department of public safety law enforcement communications systems.
5. The Iowa telecommunications and technology commission, established in Iowa Code chapter 8D, with respect to information technology that is unique to the Iowa communications network.

471—12.2(14B) Authority and purpose.

12.2(1) The information technology department is required to develop and implement information technology and standards through a process as set forth in this chapter. It is the intent of the general assembly that information technology standards be established for the purpose of guiding development of technology.

12.2(2) The goal of the department is to ensure compatibility and interoperability of state government information technology systems, while at the same time promoting effective technology alignment with enterprise strategies and programs.

471—12.3(14B) Application of standards to participating agencies. Operational standards established by the department, unless waived pursuant to rule 12.6(14B), shall apply to all information technology participating agencies.

471—12.4(14B) Application of standards to nonparticipating entities.

12.4(1) Nonparticipating entities are required to consult with the information technology department prior to procuring information technology.

12.4(2) Nonparticipating entities are also required to consider the operational standards recommended to agencies by the department.

12.4(3) Upon the decision by a nonparticipating entity regarding acquisition of information technology, the entity shall provide a written report to the information technology department.

471—12.5(14B) Development of operational standards.

12.5(1) Recommendation of operational standards. The director of the information technology department is charged with recommending standards.

12.5(2) Implementation of operational standards. The department shall implement information technology standards which are applicable to information technology operations by participating agencies, including but not limited to system design and systems integration and interoperability for participating agencies, pursuant to Iowa Code section 14B.102(2)"d."

12.5(3) Effective date of operational standards. Operational standards are effective upon 24 hours of final posting unless otherwise specified.

471—12.6(14B) Waivers of operational standards. Participating agencies may apply directly to the information technology department for a waiver of a current or proposed standard. The director of the information technology department, upon the written request of a participating agency and for good cause shown, may grant a waiver from a requirement otherwise applicable to a participating agency relating to an information technology standard established by the information technology department.

471—12.7(14B) Review of operational standards by the public and period of public comment.

12.7(1) Interested members of the public may participate in the process of establishing standards by providing written comment to Director, Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319. Comments will be accepted for a period of ten days after the initial posting of the standard by the department on the department's Web site at <http://www.state.ia.us/government/its/Standards%20&%20Policies/ITStandards/index.htm>.

12.7(2) Interested members of the public may inquire about standards currently being considered for recommendation by the director by telephoning the information technology department, administrator of policy and planning, at (515)281-5503, in writing to Information Technology Department, Hoover State Office Building, Level B, Des Moines, Iowa 50319, or by accessing the department's Web site at <http://www.state.ia.us/government/its/Standards%20&%20Policies/ITStandards/index.htm>.

471—12.8(17A) Petition to initiate review of operational standards. Any interested member of the public may petition the information technology department for review of an existing or recommended standard by filing a written or electronic request with the department. The director may grant the petition if the director determines that the petition has merit. If the petitioner does not receive a response within 30 days of receipt of petition by the department, the petitioner may deem the petition denied.

These rules are intended to implement Iowa Code chapter 14B.

ARC 0713B

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 sections 17A.3 and 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to adopt new Chapter 11, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

The purpose of this rule making is to adopt waiver rules to implement Iowa Code section 17A.9A and Executive Order Number 11, signed by Governor Vilsack on September 14, 1999. The proposed amendment will adopt by reference the currently proposed new 561—Chapter 10, "Waivers or Variances from Administrative Rules." Notice of Intended Action proposing 561—Chapter 10 was published in the Iowa Administrative Bulletin as **ARC 0495B** on February 21, 2001.

Any interested person may make written suggestions or comments regarding the proposed rules on or before June 19, 2001. Written comments should be directed to Anne Preziosi, Department of Natural Resources, Air Quality Bureau, 7900 Hickman, Urbandale, Iowa 50322; telephone (515)281-6243; fax (515)242-5094.

NATURAL RESOURCE COMMISSION[571](cont'd)

Requests for a public hearing regarding this rule making must be submitted in writing to the above address by that date.

This amendment is intended to implement Iowa Code section 17A.9A and Executive Order Number 11.

The following **new** chapter is proposed.

CHAPTER 11
WAIVERS OR VARIANCES
FROM ADMINISTRATIVE RULES

571—11.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 10, Iowa Administrative Code, provided that the word “commission” is substituted for the word “department” throughout.

571—11.2(17A) Report to commission. The director shall submit reports of decisions regarding requests for waivers or variances to the commission at its regular meetings.

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

ARC 0715B

**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 61, “State Parks and Recreation Areas,” and Chapter 62, “State Forest Camping,” Iowa Administrative Code.

These amendments accomplish the following:

1. Add an Iowa Code reference for use of permitted devices for the taking of rough fish.
2. Amend the name of Dolliver State Park to Dolliver Memorial State Park in 61.2(461A) and in other rules as it occurs.
3. Strike language under the definition of “recreation areas” that pertains to Iowa Code chapter 461A.
4. In the definition of “state park,” delete reference to Nobles Island, change the phrase “state forest camp” to “state forest campground,” and change the word “rule” to “restrictions” for use and management of state parks.
5. Add areas to the list of state parks managed by other government entities.
6. Correct the spelling of Pellett Memorial Woods State Preserve.
7. Add a definition for the term “rental facilities.”
8. Clarify information regarding camping coupon booklets and fee increases.
9. Add two paragraphs addressing local option sales tax and tax on extra campers above the basic unit of six.
10. Clarify the listing of parks open for the extended season.
11. Delete the stipulation that campers are responsible for ensuring that a campsite appears visibly occupied.

12. Clarify that special conditions or restrictions are in addition to the general provisions in 61.3(6), 61.5(461A) and 61.6(461A) that apply to specific parks.

13. Clarify the type of camping unit which may be allowed for dependent children under the age of 18 in campgrounds and in camping cabin and yurt areas.

14. Change the word “day” to “night” for the number of nights campers must vacate a campground and allow the exception to the 14-night occupancy limitation to be applied to any DNR-approved program.

15. Clarify the use of hitching rails versus allowing animals to be hitched to a trailer in campgrounds.

16. Clarify who may have access in and out of Volga River Campground after hours.

17. Delete the listing of separate rental facilities in 61.4(461A).

18. Correct the weekly cabin and yurt rental fees for Lake Darling, Pleasant Creek and McIntosh Woods and delete the fee for Cabin No. 13 at Lake Wapello State Park. Other incorrect weekly cabin fees will be updated as the cabins are renovated.

19. Renumber the paragraph for group camp rentals.

20. Clarify language and correct cross references concerning rental facility procedures, restrictions and registration.

21. Add a damage deposit for open shelters with kitchenettes.

22. Allow renters of cabins in the off-season to receive a refund if a reservation is cancelled 48 hours prior to the beginning of the rental period.

23. Amend the wording pertaining to miscellaneous fees by changing the words “this fee” to “these fees.”

24. List areas where special deer population control hunts may take place.

25. Add the Mines of Spain State Recreation Area and Marble Beach to the list of areas where lawful hunting is traditionally allowed.

26. Change the word “animal” to “deer” for authorized special hunts.

27. Delete a reference to willful interference as a violation of the subrule concerning fishing off of state-owned docks.

28. Clarify how and where motorized vehicles may be used within state parks, recreation areas and preserves by persons with disabilities.

29. Add the word “preserves” to those areas that people must vacate by 10:30 p.m. each day.

30. Delete the reference to closing hours at Hattie Elston and Claire Wilson Parks and clarify that overnight parking is prohibited unless people are fishing or boating.

31. Add Maquoketa Caves to the list of parks and recreation areas where rock climbing and rappelling are restricted.

32. Amend the reference to closing times on the Ohler property at Wapsipinicon State Park.

33. Strike the sentence that states after-hours fishing areas are shown on maps provided by DNR.

34. Amend the descriptions of after-hours fishing areas for Geode, Lake Manawa, Prairie Rose and Union Grove State Parks.

35. Change the word “inmate” to “offender” in rule 61.12(461A).

36. Rescind and reserve rule 62.7(461A).

37. Correct a cross reference in rule 62.8(461A).

Any interested person may make written suggestions or comments on the proposed amendments on or before June 21, 2001. Such written materials should be directed to the

NATURAL RESOURCE COMMISSION[571](cont'd)

Parks, Recreation and Preserves Division, 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 Division at (515)281-3449 or TDD (515)242-5967 or at the Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on June 21, 2001, at 9 a.m. in the Fourth 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 sections 455A.4, 461A.3, 461A.3A, 461A.27, 461A.35, 461A.39, 461A.42, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code chapter 724.

The following amendments are proposed.

ITEM 1. Amend rule 571—61.2(461A) as follows:

Amend the following definitions:

“Fishing” means taking or attempting to take fish by utilizing hook, line and bait as defined in Iowa Code section 481A.72, or use of permitted devices for taking rough fish as determined by Iowa Code sections 461A.42 and 481A.76.

“Group camp” means those camping areas at Dolliver Memorial State Park, Springbrook State Park and Lake Keomah State Park where organized groups (i.e., family groups or youth groups) may camp. Dining hall facilities are available.

“Recreation areas” means the following areas that have been designated by action of the natural resource commission:

<u>Area</u>	<u>County</u>
Badger Creek Recreation Area	Madison
Brushy Creek Recreation Area	Webster
Claire Wilson Park	Dickinson
Emerson Bay and Lighthouse	Dickinson
Fairport Recreation Area	Muscatine
Lower Gar Access	Dickinson
Marble Beach	Dickinson
Mines of Spain Recreation Area	Dubuque
Pioneer Recreation Area	Mitchell
Pleasant Creek Recreation Area	Linn
Templar Park	Dickinson
Volga River Recreation Area	Fayette
Wilson Island Recreation Area	Pottawattamie

These areas are managed for multiple uses, including public hunting, and are governed by rules established in this chapter as well as 571—Chapters 52 and 105 and Iowa Code chapter 461A. Use and management of these areas are governed by Iowa Code chapter 461A and by rules prescribed on area signs pursuant to Iowa Code section 461A.44.

Amend the definition of “state park,” areas listed below and last paragraph, as follows:

<u>Area</u>	<u>County</u>
Geode	Henry and Des Moines
Noble Island	Allamakee
Shimek Forest Camp Campground	Lee
Stephens Forest Camp Campground	Lucas
Yellow River Forest Camp Campground	Allamakee

Use and management of these areas are governed by Iowa Code chapter 461A and by other rules restrictions prescribed on area signs pursuant to Iowa Code section 461A.44.

Amend the definition of “state park managed by another government entity” by adopting the following new areas in alphabetical order:

<u>Area</u>	<u>County</u>
Pioneer	Mitchell
Silver Lake	Delaware

Amend the definition of “state preserve,” listing for Pellett Memorial Woods, as follows:

<u>Area</u>	<u>County</u>
Pellet Pellett Memorial Woods	Cass

Adopt the following new definition in alphabetical order: “Rental facilities” means those facilities that may be rented on a daily or nightly basis and includes open shelters, open shelters with kitchenettes, beach house open shelters, lodges, cabins, yurts and group camps.

ITEM 2. Amend subrule 61.3(1), introductory paragraph, as follows:

61.3(1) Fees. The following are maximum per-night fees for camping in state parks and recreation areas. The fees may be reduced or waived by the director for special events or special promotional efforts sponsored by the department of natural resources. Special events or promotional efforts shall be conducted so as to give all park facility users equal opportunity to take advantage of reduced or waived fees. Reductions or waivers shall be on a statewide basis covering like facilities. In the case of promotional events, prizes shall be awarded by random drawing of registrations made available to all park visitors during the event. In areas subject to a local option sales tax, the camping fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

ITEM 3. Amend subrule 61.3(1), paragraph “c,” as follows:

	<u>Fee</u>	<u>Sales Tax</u>	<u>Total Per Night</u>
c.* Per person over the basic unit of six.	.48	.02	.50

*Sales tax on the fee stated in “c” will be figured on the applicable total dollar amount collected by the person in charge of the camp area.

ITEM 4. Amend subrule 61.3(1), paragraph “j,” as follows:

	<u>Fee</u>	<u>Sales Tax</u>	<u>Total Per Night</u>
j. Camping tickets (book of seven)	86.67	4.33	91.00

(4) Camping tickets shall be valid for the calendar year in which the book is purchased and the calendar year immediately following.

NATURAL RESOURCE COMMISSION[571](cont'd)

In areas subject to a local option sales tax, the fee shall be administratively adjusted so that persons camping in those areas will pay the same total cost applicable in other areas.

(2) Camping tickets sold in one year will be valid for the following year. Persons using camping tickets purchased during the previous year will not be required to pay the difference due to any fee increase. *Persons using valid camping tickets purchased prior to any fee increase will not be required to pay the difference due to that fee increase.*

ITEM 5. Amend subrule **61.3(1)**, paragraph “k,” as follows:

k. Fees as given in paragraph “a” shall be in effect each year in the following areas ~~during the time period shown below: from the Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Backbone State Park, Delaware County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Elinor Bedell State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the (shower facilities at Gull Point State Park) are closed for the season, whichever comes first.~~

~~Elk Rock State Park, Marion County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Emerson Bay Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Fairport Campground, Muscatine County—May 1 through Monday, the national Labor Day holiday.~~

~~Gull Point State Park, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Lake Manawa State Park, Pottawattamie County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Ledges State Park, Boone County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Maquoketa Caves State Park, Jackson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Marble Beach Campground, Dickinson County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Pikes Peak State Park, Clayton County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

~~Waubonsie State Park, Fremont County—Monday before the national Memorial Day holiday through October 31 or until the shower facilities are closed for the season, whichever comes first.~~

ITEM 6. Amend subrule **61.3(1)** by adopting the following new paragraph “l”:

l. Fees as given in paragraph “a” shall be in effect each year from May 1 through Monday, the national Labor Day holiday at Fairport Station, Muscatine County.

ITEM 7. Amend subrule **61.3(3)**, paragraph “b,” as follows:

b. Campsites are considered occupied and registration for a campsite shall be considered complete when the requirements of 61.3(3)“a,” second paragraph, have been met; ~~however, it shall be the responsibility of the registered camper to ensure that the site is visibly occupied, thereby secure from others registering into the site if the site appears not to be occupied.~~

ITEM 8. Amend subrule 61.3(5), introductory paragraph, as follows:

61.3(5) Restrictions on campsite/campground use. This subrule sets forth conditions of public use which apply to all state parks and recreation areas. ~~These general conditions are subject to exceptions for specific *Specific* areas as listed in 61.3(6), 61.6(461A) and 61.9(461A) are subject to additional restrictions or exceptions.~~ The conditions in this subrule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

ITEM 9. Amend subrule **61.3(5)**, paragraph “b,” as follows:

b. Camping is restricted to one basic unit per site except that a small tent or other type of camping unit may be placed on a site with the basic unit so long as the persons occupying the second unit are under 18 years of age and are dependent members of the immediate family occupying the basic unit.

ITEM 10. Amend subrule **61.3(5)**, paragraph “g,” as follows:

g. Campers shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park campground after the fourteenth night and may not return to that same area until a *minimum of 3 days nights* has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources campground host program agreement or to seasonal employees working under the Internship or AmeriCorps program.

ITEM 11. Amend subrule **61.3(5)**, paragraph “i,” as follows:

i. In designated campgrounds in all state areas, equine animals and llamas must be stabled ~~inside a trailer or, when provided, at a hitch rail, individual stall or corral if provided.~~ Equine animals and llamas may be hitched to trailers for short periods of time to allow for grooming and saddling. These animals may be stabled at *inside* trailers where no hitching facilities are provided. Portable stalls/pens or electric fences are not permitted.

ITEM 12. Amend subrule 61.3(6), introductory paragraph, as follows:

61.3(6) Area-specific restrictions on campground use. ~~Notwithstanding~~ *In addition to the* general conditions of public use set forth in 61.3(5) and 61.5(461A), special conditions shall apply to specific areas listed as follows:

ITEM 13. Amend subrule **61.3(6)**, paragraph “c,” as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

c. Volga River State Recreation Area, Fayette County. Access into and out of designated campgrounds shall be permitted from 4 a.m. to 10:30 p.m. From 10:30 p.m. to 4 a.m., only registered campers are permitted in and out of the campground.

ITEM 14. Amend rule 571—61.4(461A), catchwords, as follows:

~~571—61.4(461A) Rental facilities, including cabins, lodges, open shelters, beach house open shelters, yurts, and group camps.~~

ITEM 15. Amend subrule 61.4(1), paragraph "a," as follows:

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	Per Night*	Per Week
Backbone State Park, Delaware County		
Renovated cabins	\$50	\$300
Two-bedroom cabins	85	510
Deluxe cabins	100	600
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Lacey-Keosauqua State Park, Van Buren County	40	240
Lake Darling State Park, Washington County	30	175 180
Lake of Three Fires State Park, Taylor County	22	120
Lake Wapello State Park, Davis County (except Cabin No. 13)	50	300
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Palisades-Kepler State Park, Linn County	30	175
Pine Lake State Park, Hardin County		
Sleeping-area cabins (four-person occupancy limit)	40	240
One-bedroom cabins	55	330
Pleasant Creek State Recreation Area, Linn County	30	175 180
Springbrook State Park, Guthrie County	22	120
Wilson Island State Recreation Area, Pottawattamie County (No. 1)	18	110
Extra cots, where available	1	

*Minimum two nights

ITEM 16. Amend subrule 61.4(1), paragraph "b," as follows:

b. Yurt rental. This fee does not include tax. Tax will be calculated at time of final payment.

	Per Night*	Per Week
McIntosh Woods State Park, Cerro Gordo County	\$30	\$175 180

*Minimum two nights

ITEM 17. Amend subrule 61.4(1), paragraph "g," as follows:

g. Group camp rental. This fee does not include tax.

(1) Dolliver Memorial State Park, Webster County, and Springbrook State Park, Guthrie County. Rental includes use of restroom/shower facility at Dolliver Memorial State Park.

1. Chaperoned organized youth groups—\$1.25 per day per person with a minimum charge per day of \$55.

2. Other groups—\$15 per day per cabin plus \$25 per day for the kitchen and dining facility.

(2) Springbrook dining hall—day use only, \$40.

(3) Lake Keomah State Park, Mahaska County. All groups—\$25 per day for the dining/restroom facility plus the applicable camping fee.

~~1. Chaperoned, organized youth groups—\$25 per day for the dining/restroom facility plus the applicable camping fee.~~

~~2. Other groups—\$25 per day for the dining/restroom facility plus the applicable camping fee.~~

ITEM 18. Amend subrule 61.4(3), catchwords, as follows:

~~61.4(3) Procedures for lodge, open shelter, beach house open shelter, yurt, cabin, and group camp rental facility registration, reservations, and rentals.~~

ITEM 19. Amend subrule 61.4(3), paragraph "b," as follows:

b. Except for the year-round-use cabins and heated lodges, reservations for the rental facilities listed in this subrule are to be made only for the current calendar year. For the year-round-use cabins and the heated lodges at Walnut Woods, Wapsipicon, and Lacey-Keosauqua State Parks, reservations will be accepted starting on November 1 of each year only for the month of January of the next year.

ITEM 20. Amend subrule 61.4(3), paragraph "e," as follows:

~~e. Telephone and walk-in reservations will not be accepted until the first business day following November 1 of each year for the heated cabins and heated lodges and the first business day after January 1 of each year for all other cabins, yurts, group camps, lodges, open shelters, beach house open shelters or designated organized youth campsites rental facilities.~~

ITEM 21. Amend subrule 61.4(3), paragraph "i," as follows:

i. The sleeping-room cabin at Wilson Island State Recreation Area, the cabins and group camp at Dolliver Memorial State Park, the cabins at Pleasant Creek State Recreation Area, and Green Valley and Lake Darling State Parks, the yurts at McIntosh Woods State Park, and the group camp at Springbrook State Park may be reserved for a minimum of two nights throughout the rental season.

ITEM 22. Amend subrule 61.4(3), paragraph "l," as follows:

l. Except by arrangement for late arrival with the park manager, no cabin, yurt or group camp reservation will be held past 6 p.m. on the first night of the reservation period if the person reserving the facility does not arrive. When arrangements for late arrival have been made, the person must appear prior to the park's closing time established by Iowa Code section 461A.46 and subrule 61.5(10) or access will not be permitted to the facility until 8 a.m. the following day. Arrangements must be made with the park manager if next-day arrival is to be later than 9 a.m.

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 23. Amend subrule **61.4(3)**, paragraph “n,” as follows:

n. Except at Wilson Island State Recreation Area, Doliver Memorial State Park, Pleasant Creek State Recreation Area, Lake Darling State Park, Green Valley State Park and McIntosh Woods State Park, no tents or other camping units are permitted for overnight occupancy in the designated cabin area. ~~Tents or camping units placed in the cabin area are~~ *One small tent shall be allowed at each cabin or yurt in the designated areas and is subject to the occupancy requirements of 61.3(5)“b.”*

ITEM 24. Amend subrule **61.4(3)**, paragraph “o,” as follows:

o. Lodges, open shelters, *open shelters with kitchenettes*, and beach house open shelters may be reserved using the procedures outlined in paragraphs “a” through “f.” ~~Lodges, open~~ *Open* shelters and beach house open shelters which are not reserved are available on a first-come, first-served basis. *If the open shelters with kitchenettes are not reserved, the open shelter portion of these facilities may be available on a first-come, first-served basis.*

ITEM 25. Amend subrule 61.4(4), introductory paragraph, as follows:

61.4(4) Winter season cabin rental—Backbone State Park, Pine Lake State Park and Wilson Island Recreation Area. ~~Procedures and conditions for winter season cabin rental include the following:~~

ITEM 26. Amend subrule **61.4(4)**, paragraph “a,” as follows:

a. Procedures for winter season rentals of the heated cabins at Backbone State Park, Pine Lake State Park, and Wilson Island State Recreation Area shall be governed by paragraphs “a” through “f,” “h,” “i,” “m,” and “n” of 61.4(3) “a” through “f.”

ITEM 27. Amend subrule **61.4(4)**, paragraph “b,” as follows:

b. All reservation requests must be for a minimum stay of two nights, *but shall not be for more than a maximum stay of two weeks.*

ITEM 28. Amend subrule **61.4(5)**, paragraph “a,” subparagraph (1), as follows:

(1) Priority reservations for these facilities will be accepted from October 1 through *4:30 p.m. on December 1 at 4:30 p.m.*, or the closest business day, for the following calendar year only. This may include the full week containing the New Year’s Day holiday of that year.

ITEM 29. Amend subrule **61.4(5)**, paragraph “b,” as follows:

b. Reservation requests received outside of the above application period will be handled by the procedures given in 61.4(3)“a” through “e.” “h.”

ITEM 30. Amend subrule **61.4(6)**, paragraph “b,” by adopting the following new subparagraph (4) and renumbering existing subparagraphs (4) to (7) as (5) to (8):

(4) Upon arrival for rental of an open shelter with kitchenette, renters shall pay in full a damage deposit equal to the amount of the rental fee for that facility.

ITEM 31. Amend subrule **61.4(6)**, paragraph “b,” subparagraph (8), introductory paragraph, as follows:

(8) Individuals who wish to cancel a reservation must do so at least 30 calendar days prior to the rental date in order to receive a full refund of the reservation deposit or any rental

fees paid in advance. *Reservations made under 61.4(3)“h” must be canceled at least 48 hours prior to the rental period in order to receive a full refund of the reservation deposit or any rental fees paid in advance.* If it is necessary to cancel a reservation after the 30-day or 48-hour allowance, a refund may be made only under the following conditions:

ITEM 32. Amend subrule 61.4(7), introductory paragraph, as follows:

61.4(7) Miscellaneous fees. ~~This fee does~~ *These fees do* not include tax.

ITEM 33. Amend rule 571—61.5(461A), introductory paragraph, as follows:

571—61.5(461A) Restrictions—area and use. This rule sets forth conditions of public use which apply to all state parks and recreation areas. ~~These general conditions are subject to exceptions for specific~~ *Specific* areas as listed in 61.3(6), 61.6(461A) and 61.9(461A) *are subject to additional restrictions or exceptions.* The conditions in this rule are in addition to specific conditions and restrictions set forth in Iowa Code chapter 461A.

ITEM 34. Amend subrule **61.5(5)**, paragraph “a,” as follows:

a. Lawful hunting as traditionally provided at Badger Creek Recreation Area, Brushy Creek Recreation Area, Pleasant Creek Recreation Area, *Mines of Spain State Recreation Area (as allowed under 61.7(461A))*, Volga River Recreation Area and Wilson Island Recreation Area.

ITEM 35. Amend subrule **61.5(5)**, paragraph “d,” as follows:

d. Special hunts authorized by the natural resource commission to control ~~animal population~~ *deer populations.*

ITEM 36. Amend subrule 61.5(6) as follows:

61.5(6) Fishing off boat docks within state areas. Persons may fish off all state-owned docks within state parks and recreation areas. Persons fishing off these docks must yield to boats and not interfere with boaters. ~~Willful interference is a violation of this subrule.~~

ITEM 37. Amend subrule **61.5(8)**, paragraph “b,” introductory paragraph, as follows:

b. ~~Persons~~ *Use of motorized vehicles by persons* with physical disabilities. Persons with physical disabilities may use certain ~~motor~~ *motorized* vehicles ~~on~~ *to access specific areas* in state parks, recreation areas and preserves, according to restrictions set out in this paragraph, in order that they might enjoy such recreational opportunities as are available to others. *Allowable vehicles include any self-propelled electric or gas vehicle which has at least three wheels, but no more than six wheels, and is limited in engine displacement to less than 800 cubic centimeters and in total dry weight to less than 1,450 pounds.*

ITEM 38. Amend subrule **61.5(8)**, paragraph “b,” by rescinding subparagraph (1) and renumbering existing subparagraphs (2) to (6) as (1) to (5).

ITEM 39. Amend subrule **61.5(8)**, paragraph “b,” subparagraph (1), as follows:

(1) Permits.

1. Each person with a physical disability must have a permit issued by the director in order to use ~~motor vehicles~~ *on a motorized vehicle* in specific areas within state parks, recreation areas, and preserves. Such permits will be issued without charge. An applicant must submit a certificate from a doctor stating that the applicant meets the criteria describ-

NATURAL RESOURCE COMMISSION[571](cont'd)

ing a person with a physical disability. One nonhandicapped companion may accompany the permit holder on the same vehicle, if that vehicle is designed for more than one rider; otherwise the companion must walk.

2. Existing permits. Those persons possessing a valid permit for use of a motorized vehicle on game management areas as provided in 571—51.7(461A) may use a ~~motor~~ motorized vehicle to gain access to *specific areas* for recreational opportunities and facilities within state parks, recreation areas and preserves.

ITEM 40. Amend subrule 61.5(8), paragraph “b,” subparagraph (2), as follows:

(2) Approved areas. ~~A permit holder must contact the park manager or natural resource technician of the specific area that the permit holder wishes to use on each visit. The park manager or technician will determine which areas or portions of areas will not be open to use by permittees, in order to protect permittees from hazards or to protect certain natural resources of the area. The park manager or technician may assist by arranging access to the areas within the park manager’s or technician’s jurisdiction and by designating specific sites or trails on the area where the motor vehicle may be used and where it may not be used. The park manager or technician will provide a map of the park or recreation area showing sites where use is permitted and bearing the signature of the manager or technician. On each visit, the permit holder must contact the park manager of the specific area in which the permit holder wishes to use a motorized vehicle. The park manager will designate on a park map the area(s) or portion(s) of areas where the permit holder will be allowed to use a motorized vehicle. This restriction is intended to protect the permit holder from hazards or to protect certain natural resources of the area. The map is to be signed and dated by the park manager on each visit. Approval for use of a motorized vehicle on state preserves also requires consultation with a member of the preserves staff in Des Moines.~~

ITEM 41. Amend subrule 61.5(8), paragraph “b,” subparagraph (3), as follows:

(3) Exclusive use. The issuance of a permit does not imply that the permittee has exclusive *or indiscriminant* use of an area. Permittees shall take reasonable care so as not to unduly interfere with the use of the area by others.

ITEM 42. Amend subrule 61.5(8), paragraph “b,” subparagraph (4), numbered paragraph “1,” as follows:

1. Except as provided in 61.5(8)~~“a,”~~ “b,” the use of a ~~motor~~ motorized vehicle on any park, recreation area or preserve by a person without a valid permit or at any site not approved on a signed map is prohibited. Permits and maps must be carried by the permittee at any time the permittee is using a ~~motor~~ motorized vehicle ~~on~~ in a park, recreation area or preserve and must be exhibited to any department employee or law enforcement official upon request.

ITEM 43. Amend subrule 61.5(10) as follows:

61.5(10) Opening and closing times. Except by arrangement or permission granted by the director or the director’s authorized representative or as otherwise stated in this chapter, the following restriction shall apply: All persons shall vacate all state parks *and preserves* before 10:30 p.m., each day, except authorized campers in accordance with Iowa Code section 461A.46, and no person or persons shall enter into such parks and preserves until 4 a.m. the following day.

ITEM 44. Amend subrule 61.5(13) as follows:

61.5(13) Rock climbing or rappelling. The rock climbing practice known as free climbing and climbing or rappelling activities which utilize bolts, pitons, or similar permanent anchoring equipment or ropes, harnesses, or slings *is are* prohibited in state parks and recreation areas, except by persons or groups registered with the park manager or technician in charge of the area. Individual members of a group must each sign a registration. Climbing or rappelling will not be permitted at the Ledges State Park, Boone County; Dolliver Memorial State Park, Webster County; Stone State Park, Woodbury and Plymouth Counties; *Maquoketa Caves State Park, Jackson County*; Wildcat Den State Park, Muscatine County; or Mines of Spain Recreation Area, Dubuque County. Other sites may be closed to climbing or rappelling if environmental damage or safety problems occur or if an endangered or threatened species is present.

ITEM 45. Amend subrule 61.5(14) as follows:

61.5(14) Speech or conduct ~~unreasonably~~ interfering with the lawful use of an area by others.

a. ~~Unprovoked speech~~ *Speech* commonly perceived as offensive or abusive is prohibited when such speech ~~unreasonably~~ interferes with lawful use and enjoyment of the area by another member of the public.

b. Quarreling or fighting is prohibited when it ~~unreasonably~~ interferes with the lawful use and enjoyment of the area by another member of the public.

ITEM 46. Amend rule 571—61.5(461A) by adopting the following ~~new~~ subrule:

61.5(15) Deer population control hunts. Deer hunting as allowed under Iowa Code section 461A.42“c” is permitted only during special hunts in the following state parks as provided for under 571—Chapter 105 and as approved by the natural resource commission. During the dates of deer hunting, only persons engaged in deer hunting shall use the area or portions thereof as designated by DNR and signed as such.

Elk Rock State Park	Jasper County
George Wyth State Park	Black Hawk County
Lake Darling State Park	Washington County
Lake of Three Fires State Park	Taylor County
Lake Manawa State Park	Pottawattamie County
Springbrook State Park	Guthrie County
Viking Lake State Park	Montgomery County

ITEM 47. Amend rule 571—61.6(461A), introductory paragraph, as follows:

~~571—61.6(461A)~~ **Certain conditions of public use applicable to specific parks and recreation areas.** ~~Notwithstanding~~ *In addition to* the general conditions of public use set forth in 61.3(5) and 61.5(461A), special conditions shall apply to the specific areas listed as follows:

ITEM 48. Amend subrule 61.6(1) as follows:

61.6(1) Hattie Elston Access and Claire Wilson Park, Dickinson County.

a. ~~Except as provided in 61.9(461A), these areas are closed to public access from 10:30 p.m. to 4 a.m.~~

b. ~~a.~~ Parking of vehicles of ~~any type~~ *overnight* on these areas is prohibited unless the vehicle operator and occupants are actively ~~using the area for involved in boating or are fishing or other recreational purposes as allowed under 571—61.9(461A).~~

c. ~~b.~~ Overnight camping is prohibited.

ITEM 49. Amend subrule 61.6(3) as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

61.6(3) Wapsipinicon State Park, Jones County. The ~~recreation area portion of the park land adjacent to the park on the southeast corner and generally referred to as the "Ohler property"~~ is closed to the public from 10:30 p.m. to 4 a.m.

ITEM 50. Amend rule 571—61.9(461A), introductory paragraph, as follows:

571—61.9(461A) Designated areas for after-hours fishing. ~~Areas which~~ These areas are open from ~~10 10:30~~ p.m. to 4 a.m. ~~are shown on maps available from the department of natural resources for fishing only.~~ The areas are described as follows:

ITEM 51. Amend subrule 61.9(8) as follows:

61.9(8) Lake Geode State Park, Des Moines County portion. The area of the dam embankment ~~between the county road and the lake as shown on the map that is parallel to County Road J20 and lies between the two parking lots located on each end of the embankment.~~

ITEM 52. Amend subrule 61.9(11) as follows:

61.9(11) Lake Manawa State Park, Pottawattamie County. The west shoreline including both sides of the main park road, commencing at the north park entrance and continuing south 1.5 miles to the parking lot immediately north of the picnic area ~~known as "Boy Scout Island," located on the west side of the southwest arm of the lake.~~

ITEM 53. Amend subrule 61.9(16) as follows:

61.9(16) Prairie Rose State Park, Shelby County. The west side of the embankment of the causeway across the southeast arm of the lake including the shoreline west of the parking area ~~to its junction with the road leading toward the park ranger residence located off County Road M47 and just north of the entrance leading to the park office.~~

ITEM 54. Amend subrule 61.9(18) as follows:

61.9(18) Union Grove State Park, Tama County.

- The dam embankment from the spillway to ~~a line parallel with~~ the west end of the parking lot adjacent to the dam.
- The area of state park ~~between the county road that parallels 220th Street, and the lake along the west shoreline from the causeway on the north end of the lake to the southerly end of the arm of the lake that extends southwesterly of the main water body to a point approximately one tenth of a mile southwest of the boat ramp.~~

ITEM 55. Amend rule ~~571—61.12(461A)~~, second unnumbered paragraph, as follows:

The funds appropriated by 1997 Iowa Acts, chapter 215, section 37, and subsequent Acts, will be used to renovate, replace or construct new vertical infrastructure through construction contracts, agreements with local government entities responsible for managing state parks and other public facilities, and agreements with the department of corrections to use ~~inmate~~ offender labor where possible. Funds shall also be used to support site survey, design and construction contract management through consulting engineering and architectural firms and for direct survey, design and construction management costs incurred by department engineering and architectural staff for restore the outdoors projects. Funds shall not be used to support general department oversight of the restore the outdoors program, such as accounting, general administration or long-range planning.

ITEM 56. Rescind and reserve rule ~~571—62.7(461A)~~.

ITEM 57. Amend rule ~~571—62.8(461A)~~, first unnumbered paragraph, as follows:

Stabling of equine animals and llamas shall be in accordance with ~~571—paragraph 61.5(7)"e."~~ ~~61.3(5)"i."~~

ARC 0712B

PRESERVES, STATE ADVISORY BOARD FOR[575]

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 465C.8, the State Advisory Board for Preserves hereby gives Notice of Intended Action to amend Chapter 1, "Organization and Operation," and Chapter 2, "Management of State Preserves," Iowa Administrative Code.

These amendments are proposed to reduce unnecessary language that duplicates or paraphrases language in Iowa Code chapter 465C, update Iowa Code references, better explain the types of preserves, and update the provisions for management of preserves.

Any interested person may make written or oral suggestions or comments on these proposed amendments on or before June 21, 2001. Such written material should be directed to the State Preserves Program, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034, fax (515)281-6794. Persons who wish to convey their views orally should contact the Preserves staff at (515)281-8524 or at the office on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on June 21, 2001, at 10 a.m. in the Fourth Floor 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.

These amendments are intended to implement Iowa Code section 465C.8.

The following amendments are proposed.

ITEM 1. Amend ~~575—~~Chapters 1 and 2, parenthetical implementation statutes, by striking "(111B)" and inserting "(465C)".

ITEM 2. Amend rule ~~575—1.1(465C)~~ by striking the Iowa Code chapter reference "111B" and inserting "465C".

ITEM 3. Amend rule ~~575—1.2(465C)~~ as follows:

~~575—1.2(465C) Staff. Recommends employment of a trained ecologist and personnel needed to carry out board duties. The director shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and other personnel as necessary to carry out the powers and duties of the board.~~

ITEM 4. Rescind and reserve rule ~~575—1.3(465C)~~.

ITEM 5. Amend rule ~~575—1.4(465C)~~, introductory paragraph, as follows:
~~575—1.4(465C) Meetings. Minimally the state preserves advisory board meets annually to elect a chairperson but may~~

PRESERVES, STATE ADVISORY BOARD FOR[575](cont'd)

~~meet at other times. The board shall organize annually by the election of a chairperson. The board shall meet annually and at such times as it deems necessary. Meetings may be called either by the chairperson or on request to the chairperson by three board members.~~

ITEM 6. Strike the implementation sentence at the end of **575—Chapter 1** and insert in lieu thereof the following:
These rules are intended to implement Iowa Code section 465C.8.

ITEM 7. Amend rule 575—2.1(465C) as follows:

575—2.1(465C) General provisions.

2.1(1) Definitions. As used in these rules, the following definitions shall apply:

“Articles of dedication” means those terms described in Iowa Code section ~~111B.9~~ **465C.9**.

“Board” means the state preserves advisory board.

“Commission” means the natural resource commission.

“Department” means the department of natural resources.
“Director” means director of the department of natural resources.

“Preserves Preserve” means the same as defined in Iowa Code section ~~111B.1~~ **465C.1**.

2.1(2) Types of preserves. There shall be five major classes of preserves.

a. ~~Nature~~ *Natural* preserves. These areas which are of value primarily because they contain natural communities, habitats, or flora and fauna which have undergone little or no disturbance by modern man, or which contain species which are in danger of extinction in the state of Iowa contain natural communities, habitats, native flora and fauna, or endangered, threatened, or rare organisms.

b. Archaeological preserves. These areas contain important archaeological resources which include any material remains of past human life or activities which are of archaeological interest significant deposits left by prehistoric or early historic peoples.

c. Historical preserves. These are sites which that contain structures, objects, or features, both man-made and natural, which are of significance in studying the tenure of man in Iowa since European contact or places that are of significance in studying the tenure of humans in Iowa since the advent of the first Euro-American explorers.

d. Geological preserves. These are areas which contain rare or distinctive landforms, fossils, stratigraphic sections, mineral deposits or examples of mining history; type or reference sections; or other special features or deposits which represent the events and processes of Iowa’s earth history.

e. Scenic preserves. These are areas which that contain scenic features of aesthetic, scientific, or educational value.

ITEM 8. Amend rule 575—2.2(465C) as follows:

575—2.2(465C) Management provisions.

2.2(1) Administration and custody management. The administrative and custodial management authority shall be designated in the articles of dedication agreed upon by the board, the property owner, and the manager. ~~In the case that an individual is designated as the custodian, the articles of dedication shall provide for a successional custodian(s) until the area is assured of permanent care.~~

2.2(2) Management and use. ~~All rules for the management and use of a preserve shall be included in the articles of dedication. A specific management plan shall be attached to and made a part of the articles of dedication prepared for each preserve and kept on file at the Wallace State Office~~

Building. The management plan shall identify compatible and noncompatible uses.

~~**2.2(3) Reports and records.** The custodian shall submit periodic reports to the board and to the department as the board and the department shall designate, and shall retain a copy of the report. These reports shall constitute a portion of the records for each preserve. Such records shall be open for public inspection at any reasonable time.~~

~~**2.2(4) Research.** In addition to cultural and natural history research, there may be continuing studies on the management of each preserve or on particular problems unique to each preserve. Management plans may be updated as necessary. Revisions shall be attached to the articles of dedication.~~

ITEM 9. Strike the implementation sentence at the end of **575—Chapter 2** and insert in lieu thereof the following:

These rules are intended to implement Iowa Code section 465C.8.

ARC 0703B

**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 Dietetic Examiners hereby gives Notice of Intended Action to adopt new Chapter 79, “Board of Dietetic Examiners”; to rescind Chapter 80, “Board of Dietetic Examiners,” and adopt a new chapter 80, “Licensure of Dietitians”; to amend Chapter 81, “Continuing Education for Dietitians”; and to adopt new Chapter 82, “Discipline for Dietitians,” and new Chapter 83, “Fees,” Iowa Administrative Code.

The proposed amendments rescind the current rules regarding licensing, discipline and fees, and adopt a new chapter for licensure, a new chapter for discipline and a new chapter for fees.

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

Any interested person may make written comments on the proposed amendments no later than June 20, 2001, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on June 20, 2001, 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 17A, 147, 152A and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following amendments are proposed.

ITEM 1. Adopt **new** 645—Chapter 79 as follows:

CHAPTER 79
BOARD OF DIETETIC EXAMINERS

645—79.1(152A) General definitions.

“Board” means the board of dietetic examiners.

“Department” means the department of public health.

“Dietetics” means the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, food, management, and behavioral and social sciences to achieve and maintain peoples’ health. The primary function of dietetic practice is the provision of nutrition care services that shall include:

1. Assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting.
2. Establishing priorities, goals, and objectives that meet nutrition needs and are consistent with available resources and constraints.
3. Providing nutrition counseling in health and disease.
4. Developing, implementing, and managing nutrition care systems.
5. Evaluating, making changes in, and maintaining appropriate standards of quality in food and nutrition services.

“Licensed dietitian” or “licensee” means any person licensed to practice dietetics in the state of Iowa.

“Nutrition assessment” means the evaluation of the nutrition needs of individuals and groups based upon appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutrition intake including enteral and parenteral nutrition.

“Nutrition counseling” means advising and assisting individuals or groups on appropriate nutrition intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

“Registered dietitian” means a dietitian who has met the standards and qualifications of the Commission on Dietetic Registration, a member of National Commission for Health Certifying Agencies.

645—79.2(152A) Availability of information.

79.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

79.2(2) Information may be obtained by writing to the Board of Dietetic Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board address.

645—79.3(152A) Organization and proceedings.

79.3(1) The board shall consist of five members appointed by the governor and confirmed by the senate. The board shall include one licensed dietitian representing the approved or accredited dietetic education programs, one licensed dietitian representing clinical dietetics in hospitals, one licensed dietitian representing community nutrition services and two members who are not licensed dietitians and who shall represent the general public. A quorum shall consist of a majority of the members of the board. For the initial terms of members of the board, the governor shall appoint

one member to serve a term of one year, two members to serve terms of two years, and two members to serve terms of three years.

79.3(2) A chairperson, vice chairperson and secretary shall be elected at the first meeting after April 30 of each year.

79.3(3) The board shall hold at least an annual meeting and may hold additional meetings called by the chairperson or by a majority of the board’s members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert’s Rules of Order, Revised, at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

645—79.4(152A,272C) Principles. The dietetic practitioner shall:

1. Provide professional services with objectivity and with respect for the unique needs and values of individuals.
2. Avoid discrimination against other individuals on the basis of race, creed, religion, sex, age, and national origin.
3. Fulfill professional commitments in good faith.
4. Conduct oneself with honesty, integrity, and fairness.
5. Remain free of conflict of interest while fulfilling the objectives and maintaining the integrity of the dietetic profession.
6. Maintain confidentiality of information.
7. Practice dietetics based on scientific principles and current information.
8. Assume responsibility and accountability for personal competence in practice.
9. Recognize and exercise professional judgment within the limits of the qualifications and seek counsel or make referrals as appropriate.
10. Provide sufficient information to enable clients to make their own informed decisions.
11. Inform the public and colleagues by using factual information and shall not advertise in a false or misleading manner.
12. Promote or endorse products in a manner that is neither false nor misleading.
13. Permit use of the practitioner’s name for the purpose of certifying that dietetic services have been rendered only after having provided or supervised the provision of those services.
14. Accurately present professional qualifications and credentials.
15. Present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist.
16. Make all reasonable effort to avoid bias in any kind of professional evaluation and provide objective evaluation of candidates for professional association membership, awards, scholarships, or job advancements.

These rules are intended to implement Iowa Code chapters 152A and 272C.

ITEM 2. Rescind 645—Chapter 80 and adopt the following **new** chapter in lieu thereof:

CHAPTER 80
LICENSURE OF DIETITIANS

645—80.1(152A) Definitions. For purposes of these rules, the following definitions shall apply:

“Board” means the board of dietetic examiners.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

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

“License expiration date” means the fifteenth day of the birth month every two years following initial licensure.

“Licensure by endorsement” means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state.

“Reciprocal license” means the issuance of an Iowa license to practice dietetics to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of dietetic examiners to license persons who have the same or similar qualifications as those required in Iowa.

645—80.2(152A) Requirements for licensure. The following criteria shall apply to licensure:

80.2(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Dietetic Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

80.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

80.2(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Dietetic Examiners. The fees are nonrefundable.

80.2(4) No application will be considered by the board until:

a. Official copies of academic transcripts have been sent directly from the school to the board;

b. A notarized copy of the Commission on Dietetic Registration (CDR) card has been received by the board; and

c. The applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration. The board will accept the passing score set by the Commission on Dietetic Registration.

80.2(5) A license is not required for dietitians who are in this state for the purpose of consultation when they are licensed in another state, U.S. possession, or country, or have received at least a baccalaureate degree in human nutrition from a U.S. regionally accredited college or university. Consultation means the practice of dietetics in affiliation with, and at the request of, a dietitian licensed in this state.

80.2(6) Licensees who were issued their initial licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

80.2(7) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

645—80.3(152A) Educational qualifications.

80.3(1) The applicant shall be issued a license to practice dietetics by the board when the applicant possesses a baccalaureate degree or postbaccalaureate degree from a U.S. regionally accredited college or university with a major course of study in human nutrition, food and nutrition, nutrition education, dietetics, or food systems management, or in an equivalent major course of minimum academic require-

ments as established by the American Dietetic Association and approved by the board.

80.3(2) Foreign-trained dietitians shall:

a. Provide an equivalency evaluation of their educational credentials by International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, California 90231-3665, telephone (310) 258-9451, Web site www.ierf.org, or E-mail at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a dietetic program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—80.4(152A) Supervised experience. The applicant shall:

1. Complete a documented supervised practice experience component in a dietetic practice of not less than 900 hours under the supervision of:

- A registered dietitian;
- A licensed dietitian; or
- An individual with a doctoral degree conferred by a U.S. regionally accredited college or university with a major course of study in human nutrition, nutrition education, food and nutrition, dietetics or food systems management;

2. Have a supervised practice experience that must be completed in the United States or its territories; and

3. Have the degree of a supervisor who obtained a doctoral degree outside of the United States or its territories validated as equivalent to the doctoral degree conferred by a U.S. regionally accredited college or university.

645—80.5(152A) Licensure by endorsement. An applicant who has been a licensed dietitian under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of licensure requirements that are similar to those required in Iowa;
4. Provides official copies of the academic transcripts;
5. Provides a copy of the registration card; and
6. Provides verification of licenses from other states in which the applicant has a current active license sent directly from those states to the board office.

645—80.6(152A) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of dietitians. The applicant shall take the examination required by the board.

645—80.7(152A) License renewal.

80.7(1) The biennial license renewal period for a license to practice dietetics shall begin on the fifteenth day of the licensee’s birth month and end on the fifteenth day of the licensee’s birth month two years later. All licensees shall renew on a biennial basis.

80.7(2) A renewal of license application and continuing education report form to practice dietetics shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not re-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

lieve the license holder of the obligation to pay the biennial renewal fee(s) on or before the renewal date.

a. The licensee shall submit the completed application and continuing education report form with the renewal fee(s) to the board office before the license expiration date.

b. Individuals who were issued their initial licenses within six months of the license renewal date will not be required to renew their licenses until the next renewal two years later.

c. 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 30 hours of continuing education per biennium for each subsequent license renewal.

d. Persons licensed to practice dietetics shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

80.7(3) Late renewal. If the renewal fees, continuing education report and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration shall be charged.

80.7(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—80.8(272C) Exemptions for inactive practitioners.

80.8(1) A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of 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 in the state of Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted by the license expiration date upon the form provided by the board. A licensee must hold a current license to apply for exempt status. The licensee shall apply for inactive status prior to the license expiration date.

80.8(2) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the requirements for reinstatement as outlined in 645—81.10(152A,272C).

80.8(3) Licensees shall renew at the next scheduled renewal time. Licensees whose licenses were reinstated within six months prior to the birth month renewal date shall not be required to renew their licenses until the birth month renewal date two years later.

80.8(4) A new licensee who is on inactive status during the initial license renewal time period and reinstates before the first license expiration date will not be required to complete continuing education for that first license renewal time period only. Thirty hours of continuing education will be required for every renewal thereafter.

80.8(5) Reinstatement of inactive license after exemption. The following chart illustrates the requirements for reinstatement based on the length of time a license has been inactive.

An applicant shall satisfy the following requirements:	1 renewal	2 or more renewals
Submit written application for reinstatement to the board	Required	Required
Pay the current renewal fee	\$100	\$100
Pay the reinstatement fee	\$50	\$50
Provide proof of valid dietetics license in another state of the U.S. or District of Columbia and completion of continuing education equivalent to that required in these rules OR Provide evidence of completion of continuing education hours completed within the two most recent bienniums prior to the date of application for reinstatement OR Provide evidence of successful completion, with a passing grade, of the license examination conducted within one year immediately prior to submission of application for reinstatement	Current valid license and 30 hours 30 hours Successful completion	Current valid license and 60 hours 60 hours Successful completion
Total fees and continuing education hours required for reinstatement:	\$150 and 30 hours	\$150 and 60 hours

645—80.9(272C) Lapsed licenses.

80.9(1) If the renewal fee(s) and continuing education report are received more than 30 days after the license renewal expiration date, the license is lapsed. An application for reinstatement must be filed with the board accompanied by the reinstatement fee, the renewal fee(s) for each biennium the license is lapsed and the late fee for failure to renew before expiration. The licensee may be subject to an audit of the licensee's continuing education report.

80.9(2) Licensees who have not fulfilled the requirements for license renewal or for an exemption in the required time frame will have a lapsed license and shall not engage in the practice of dietetics. Practicing without a license may be cause for disciplinary action.

80.9(3) In order to reinstate lapsed licenses, licensees shall comply with all requirements for reinstatement as outlined in 645—81.6(152A).

80.9(4) After the reinstatement of a lapsed license, the licensee shall renew at the next scheduled renewal cycle and complete the continuing education required for the biennium.

80.9(5) Verifications of license(s) are required from any state in which the licensee has practiced since the Iowa license lapsed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

80.9(6) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 or more renewals
Submit written application for reinstatement	Required	Required
Pay the renewal fee(s)	\$100	\$200
Pay the late fee	\$50	\$50
Pay the reinstatement fee	\$50	\$50
Satisfactorily complete continuing education requirements during the period since the license lapsed	30 hours	60 hours
Total fees and continuing education hours required for reinstatement:	\$200 and 30 hours	\$300 and 60 hours

645—80.10(17A,147,272C) License denial.

80.10(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined in these rules shall specifically describe the facts to be contested and determined at the hearing.

80.10(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C.

These rules are intended to implement Iowa Code chapters 17A, 147, 152A and 272C.

ITEM 3. Amend numbered paragraph **81.6“5”** as follows:

5. Provides evidence of satisfactory completion of Iowa continuing education requirements ~~during the period since the license lapsed~~ *completed within the two bienniums prior to the date of application for reinstatement.* The total number of continuing education hours required for license reinstatement is computed by multiplying 30 by the number of bienniums since the license lapsed up to a maximum of 60 hours.

ITEM 4. Amend subrules 81.10(2) and 81.10(3) as follows:

81.10(2) *Submit the current renewal fee;*

81.10(3) *Submit the reinstatement fee;*

~~**81.10(3)** Furnish evidence of completion of 30 hours of approved continuing education per biennium up to a maximum of 60 hours of continuing education. The continuing education hours must be completed within the two bienniums prior to the date of application for reinstatement; and~~

ITEM 5. Adopt **new** 645—Chapter 82 as follows:

CHAPTER 82

DISCIPLINE FOR DIETITIANS

645—82.1(152A,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in

these rules, including civil penalties in an amount not to exceed \$1000, when the board determines that the licensee is guilty of any of the following acts or offenses:

82.1(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice dietetics in this state, and includes false representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or attempting to file or filing with the board or the department of public health any false or forged diploma, or certificate or affidavit or identification or qualification in making an application for a license in this state.

82.1(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of the dietitian's practice;

b. A substantial deviation by the dietitian from the standards of learning ordinarily possessed and applied by other dietitians in the state of Iowa acting in the same or similar circumstances;

c. A failure by a dietitian to exercise in a substantial respect that degree of care which is ordinarily exercised by the average dietitian in the state of Iowa acting in the same or similar circumstances; and

d. A willful or repeated departure from or failure to conform to the minimal standard of acceptable and prevailing practice of dietetics in the state of Iowa.

82.1(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Practice harmful or detrimental to the public includes, but is not limited to, the failure of a dietitian to possess and exercise that degree of learning and care expected of a reasonably prudent dietitian acting in the same or similar circumstances in this state.

82.1(4) Habitual intoxication or addiction to the use of drugs, including the inability of a dietitian to practice with reasonable skill and safety by reason of the excessive use of alcohol, drugs, narcotics, chemicals or other type of material on a continuing basis, or the excessive use of alcohol, drugs, narcotics, chemicals or other type of material which may impair a dietitian's ability to practice the profession with reasonable skill and safety.

82.1(5) Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

82.1(6) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a dietitian in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation and includes statements which may consist of, but are not limited to:

a. Inflated or unjustified expectations of favorable results.

b. Self-laudatory claims that imply that the dietitian is a skilled dietitian engaged in a field or specialty of practice for which the dietitian is not qualified.

c. Extravagant claims or proclaiming extraordinary skills not recognized by the dietetic profession.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

82.1(7) Willful or repeated violations of the provisions of these rules and Iowa Code chapter 147.

82.1(8) Violating a regulation or law of this state, or the United States, which relates to the practice of dietetics.

82.1(9) Failure to report a license revocation, suspension or other disciplinary action taken by a licensing authority of another state, district, territory or country within 30 days of the final action by such licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, such report shall be expunged from the records of the board.

82.1(10) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements to restrict the practice of dietetics entered into in another state, district, territory or country.

82.1(11) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice dietetics.

82.1(12) Failure to identify oneself as a dietitian to the public.

82.1(13) Violating a lawful order of the board, previously entered by the board in a disciplinary hearing or pursuant to informal settlement.

82.1(14) Being adjudged mentally incompetent by a court of competent jurisdiction.

82.1(15) Making suggestive, lewd, lascivious or improper remarks or advances to a patient or client.

82.1(16) Knowingly submitting a false report of continuing education or failure to submit the biennial report of continuing education.

82.1(17) Failure to comply with a subpoena issued by the board.

82.1(18) Failure to file the reports required by these rules concerning acts or omissions committed by another licensee.

82.1(19) Obtaining any fee by fraud or misrepresentation.

82.1(20) Failing to exercise due care in the delegation of dietetic services to or supervision of assistants, employees or other individuals, whether or not injury results.

This rule is intended to implement Iowa Code sections 147.76, 147.55(3), 272C.4 and 272C.10.

ITEM 6. Adopt **new** 645—Chapter 83 as follows:

CHAPTER 83
FEES

645—83.1(147,152A) License fees. All fees are nonrefundable.

83.1(1) Licensure fee for license to practice dietetics, licensure by endorsement, or licensure by reciprocity is \$100.

83.1(2) Biennial license renewal fee for each biennium is \$100.

83.1(3) Late fee for failure to renew before expiration is \$50.

83.1(4) Reinstatement fee for a lapsed license or an inactive license is \$50.

83.1(5) Duplicate license fee is \$10.

83.1(6) Verification of license fee is \$10.

83.1(7) Returned check fee is \$15.

83.1(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152A and 272C.

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**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 Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to adopt new Chapter 299, "Board of Speech Pathology and Audiology Examiners"; to rescind Chapter 300, "Board of Speech Pathology and Audiology Examiners," and adopt new chapter 300, "Licensure of Speech Pathologists and Audiologists"; to rescind Chapter 302, "Speech Pathology and Audiology Assistants"; to amend Chapter 303, "Continuing Education for Speech Pathologists and Audiologists"; and to adopt new Chapter 304, "Discipline for Speech Pathologists and Audiologists," and new Chapter 305, "Fees," Iowa Administrative Code.

The proposed amendments rescind the current licensing rules and the chapters on speech pathology and audiology assistants and fees and adopt new chapters for the board proceedings, licensure, discipline and fees.

A change was made from the current rules regarding the temporary clinical license plan of action for the supervised clinical experience. The rule was unwieldy and made the process lengthy with little added value. The process for the plan was made more efficient and contains steps that are important in the process to receive a temporary clinical license.

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

Any interested person may make written comments on the proposed amendments no later than June 20, 2001, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

A public hearing will be held on June 20, 2001, 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 17A, 147 and 272C.

The following amendments are proposed.

ITEM 1. Adopt **new** 645—Chapter 299 as follows:

CHAPTER 299
BOARD OF SPEECH PATHOLOGY
AND AUDIOLOGY EXAMINERS

645—299.1(147) General definitions.

"Audiologist" means a person who engages in the application of principles, methods and procedures for measurement, testing, evaluation, prediction, consultation, counsel-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ing, instruction, habilitation, rehabilitation, or remediation related to disorders of hearing, balance and associated communication disorders for the purpose of nonmedically evaluating, identifying, diagnosing, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals, including the determination and use of appropriate amplification.

“Board” means the board of speech pathology and audiology examiners.

“Department” means the department of public health.

“Speech pathologist” means a person who engages in the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, consultation, counseling, diagnosing, instruction, habilitation, rehabilitation, or remediation related to the development and disorders of speech, fluency, voice, or language for the purposes of nonmedically evaluating, preventing, ameliorating, modifying, or remediating such disorders and conditions in individuals or groups of individuals.

645—299.2(147) Availability of information.

299.2(1) All information regarding rules, forms, time and place of meetings, minutes of meetings, record of hearings, and examination results are available to the public between the hours of 8 a.m. and 4:30 p.m., Monday to Friday, except holidays.

299.2(2) Information may be obtained by writing to the Board of Speech Pathology and Audiology Examiners, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. All official correspondence shall be in writing and directed to the board at this address.

645—299.3(147) Organization and proceedings.

299.3(1) Chair. The chairperson of the board shall:

- a. Be selected by the members of the board.
- b. Preside at all meetings of the board and conduct the meeting following Robert’s Rules of Order.
- c. Appoint committees as is deemed necessary to study issues.

299.3(2) Vice-chair. The vice-chairperson of the board shall:

- a. Be selected by the members of the board.
 - b. Act in capacity of chair in the absence of that officer.
- 299.3(3)** Secretary. The secretary of the board shall:
- a. Be selected by the members of the board.
 - b. Act in capacity of chair in the absence of officers representing the chair and vice-chair.
 - c. Keep an accurate and complete record of all transactions of the board.

299.3(4) Quorum. Four members of the seven-member board shall represent a quorum. Business shall not be conducted in the absence of a quorum.

299.3(5) Quorum. Four members of the seven-member board shall represent a quorum. Business shall not be conducted in the absence of a quorum.

645—299.4(147) General.

299.4(1) All material sent to the board for review must be submitted at least two weeks before a regularly scheduled meeting. Materials received after this time will be reviewed at the next regularly scheduled meeting of the board.

299.4(2) For those persons conducting hearing tests under the direct supervision of a licensed physician and surgeon or licensed osteopathic physician and surgeon functioning under Iowa Code section 147.152(1), “direct supervision” means the physician must order the hearing test performed on each individual patient and maintain control over the reading of the results. The person working under direct supervision of a physician must be able to show that the person did so at the direction of the physician and did nothing more than perform the hearing test. Direct supervision by a

physician means the person conducting the hearing test does so in the usual location in which the physician performs medical services and sees patients. The physician must be readily available to respond to a request by a patient or the person conducting the hearing test.

These rules are intended to implement Iowa Code chapters 147 and 272C.

ITEM 2. Rescind 645—Chapter 300 and adopt the following new chapter in lieu thereof:

**CHAPTER 300
LICENSURE OF SPEECH PATHOLOGISTS
AND AUDIOLOGISTS**

645—300.1(147) Definitions. For purposes of these rules, the following definitions shall apply:

“ASHA” means the American Speech-Language Hearing Association.

“Assistant” means a person who works under the supervision of an Iowa-licensed speech pathologist or audiologist, does not meet the requirements to be licensed as a speech pathologist or audiologist, and meets the minimum requirements set forth in these rules.

“Board” means the board of speech pathology and audiology examiners.

“Full-time” means a minimum of 30 hours per week.

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

“Licensee” means any person licensed to practice as a speech pathologist or audiologist in the state of Iowa.

“License expiration date” means December 31 of odd-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice speech pathology or audiology to an applicant who is currently licensed in another state.

“Reciprocal license” means the issuance of an Iowa license to practice speech pathology or audiology to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of speech pathology and audiology examiners to license persons that have the same or similar qualifications to those required in Iowa.

645—300.2(147) Requirements for licensure. The following criteria shall apply to licensure:

300.2(1) The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Speech Pathology and Audiology Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

300.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

300.2(3) Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Speech Pathology and Audiology Examiners. The fees are nonrefundable.

300.2(4) The application shall include:

- a. Official copies of the American Speech-Language Hearing Association (ASHA) certificate of clinical competence; or
- b. Submission of the following:
 - (1) Official copies of academic transcripts sent directly from the school to the board showing proof of possession of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a master's degree or its equivalent and official verification of completion of not less than 300 hours of supervised clinical training;

(2) Verification of nine months of full-time clinical experience, or equivalent, completed after the master's degree, under the supervision of a licensed speech pathologist or audiologist; and

(3) Results of the National Teacher Examination.

300.2(5) Licensees who were issued their licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal date two years later.

300.2(6) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.

645—300.3(147) Educational qualifications.

300.3(1) The applicant shall possess the following:

a. A master's degree or its equivalent from an accredited school, college or university with a major in speech pathology; or

b. A master's degree or its equivalent from an accredited school, college or university with a major in audiology.

300.3(2) Foreign-trained speech pathologists and audiologists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site www.ierf.org or E-mail at info@ierf.org; International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727)549-8555. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a speech pathology or audiology program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—300.4(147) Examination requirements. The examination required by the board shall be the National Teacher Examination in speech pathology or audiology. This examination is administered by the Educational Testing Service. The applicant should contact the nearest accredited college or university for the time and place of the examination.

300.4(1) The applicant has full responsibility for making arrangements to take the National Teacher Examination in speech pathology or audiology and for bearing all expenses associated with taking the examination. The applicant also has the responsibility for having the examination scores sent directly to the board from the Educational Testing Service.

300.4(2) The board shall determine the qualifying scores for both the speech pathology and audiology examinations.

645—300.5(147) Temporary clinical license. A temporary clinical license for the purpose of obtaining clinical experience as a prerequisite for licensure is valid for one year and may be renewed one time.

300.5(1) An applicant must submit the following to the board:

a. Evidence of supervision by a speech pathologist or audiologist with an active, current Iowa license in good standing;

b. An official application form provided by the board of speech pathology and audiology examiners;

c. Official copies of transcripts sent directly from the school to the board showing proof of possession of a master's degree or its equivalent;

d. Official verification of completion of not less than 300 hours of supervised clinical training in an accredited college or university; and

e. The temporary clinical license fee.

300.5(2) The plan for clinical experience shall:

a. Include at least nine months of full-time clinical experience, or equivalent;

b. Include supervision by an Iowa-licensed speech pathologist or audiologist, as appropriate;

c. Be kept by the supervisor for two years from the last date of the clinical experience; and

d. Include a completed supervised clinical experience report form that shall be submitted to the board of speech pathology and audiology examiners upon successful completion of the nine months of full-time clinical experience. The applicant may then apply for licensure.

645—300.6(147) Temporary permit.

300.6(1) A nonresident may apply to the board for a temporary permit to practice speech pathology or audiology:

a. For a period not to exceed three months;

b. By submitting a letter to support the need for such a permit;

c. By submitting documents to show that the applicant has substantially the same qualifications as required for licensure in Iowa;

d. By submitting the documentation prior to the date the applicant intends to begin practice; and

e. By submitting the temporary permit fee.

300.6(2) The applicant shall receive a final determination from the board regarding the application for a temporary permit.

645—300.7(147) Use of assistants. A licensee shall, in the delivery of professional services, utilize assistants only to the extent provided in these rules.

300.7(1) Duties.

a. Speech pathology assistant I. A speech pathology assistant I works with an individual for whom significant improvement is expected within a reasonable amount of time.

b. Speech pathology assistant II. A speech pathology assistant II works with an individual for whom maintenance of present level of communication is the goal; or for whom, based on the history and diagnosis, only slow improvement is expected.

c. Audiology assistant I. An audiology assistant I is more broadly trained and may be given a variety of duties depending upon the individual's training.

d. Audiology assistant II. An audiology assistant II is trained specifically for a single task for screening.

300.7(2) Minimum requirements.

a. A speech pathology assistant I or II or audiology assistant I must satisfy the following minimum requirements:

(1) Reach the age of majority.

(2) Complete a high school education, or its equivalent.

(3) Complete a three-semester-hour (or four-quarter-hour) course in introductory speech and language pathology for speech pathology assistants or in audiology for audiology assistants from an accredited educational institution and 15 hours of instruction in the specific tasks which the assistant will be performing; or

(4) Complete a minimum training period comprised of 75 clock hours on instruction and practicum experience.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. An audiology assistant II must satisfy the following requirements:

- (1) Reach the age of majority.
- (2) Complete a high school education, or its equivalent.
- (3) Complete a minimum of 15 clock hours of instruction and practicum experience in the specific task which the assistant will be performing.

300.7(3) Utilization. Utilization of a speech pathology or audiology assistant requires that a plan be developed by the licensee desiring to utilize that assistant, consisting of the following information:

a. Documentation that the assistant meets minimum requirements;

b. A written plan of the activities and supervision that must be kept by the licensee supervising the assistant. This supervision must include direct on-site observation for a minimum of 20 percent of the assistant's direct patient care for level I speech pathology and level I audiology assistants and 10 percent for level II speech pathology assistants. Level II audiology assistants must be supervised 10 percent of the time. At least half of that time must be direct on-site observation with the other portion provided as time interpreting results;

c. A listing of the facilities where the assistant will be utilized; and

d. A statement, signed by the licensee and the assistant, that the rules pertaining to assistants have been read by both.

300.7(4) Maximum number of assistants. A licensee may not utilize more than three assistants unless a plan of supervision is filed and approved by the board.

300.7(5) Supervisor responsibilities. A licensee who utilizes an assistant shall have the following responsibilities:

a. To be legally responsible for the actions of the assistant in that assistant's performance of assigned duties with a client;

b. To make all professional decisions relating to the management of a client;

c. To ensure that the assistant is assigned only those duties and responsibilities for which the assistant has been specifically trained and is qualified to perform;

d. To ensure compliance of the assistant(s) under supervision with the provisions of these rules by providing periodic direct observation and supervision of the activities of the assistant; and

e. To submit to the board of speech pathology and audiology upon request a copy of the plan of activities and supervision for each assistant and documentation of the dates each assistant was utilized by the licensee.

645—300.8(147) Licensure by endorsement. An applicant who has been a licensed speech pathologist or audiologist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;
2. Pays the licensure fee;
3. Shows evidence of an ASHA certificate or the National Teacher Examination scores sent directly from the examination service to the board;
4. Provides official copies of the academic transcripts; and
5. Provides verification of licenses from all other states that have been sent directly from those states to the board office.

645—300.9(147) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of speech pathologists and audiologists.

645—300.10(147) License renewal.

300.10(1) The biennial license renewal period for a license to practice speech pathology or audiology shall begin on January 1 of even-numbered years and end on December 31 of each odd-numbered year. All licensees shall renew on a biennial basis.

300.10(2) A renewal of license application and a continuing education report form to practice speech pathology or audiology shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fee(s) on or before the renewal date.

a. The licensee shall submit the completed application and the continuing education report form with the renewal fee to the board office before the license expiration date.

b. Individuals who were issued their initial licenses within six months of the license renewal date will not be required to renew their licenses until the next renewal date two years later.

c. 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 30 hours of continuing education per biennium for each subsequent license renewal.

d. Persons licensed to practice speech pathology or audiology shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

300.10(3) Late renewal. If the renewal fee(s), continuing education report and renewal application are received within 30 days after the license expiration date, the late fee for failure to renew before expiration is charged.

300.10(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—300.11(272C) Exemptions for inactive practitioners.

300.11(1) A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of 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 practice in the state of Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board. A licensee must hold a current license to apply for exempt status. The licensee shall apply for inactive status prior to the license expiration date.

300.11(2) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the requirements for reinstatement as outlined in 645—303.10(147,272C).

300.11(3) Licensees shall renew at the next scheduled renewal. Licensees whose licenses were reinstated within six

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

months prior to the renewal shall not be required to renew their licenses until the renewal date two years later.

300.11(4) A new licensee who is on inactive status during the initial license renewal time period and reinstates before the first license expiration date will not be required to complete continuing education for that first license renewal time period only. Thirty hours of continuing education will be required for every renewal thereafter.

300.11(5) Verifications of license(s) are required from any state in which the licensee has practiced since the Iowa license became inactive.

300.11(6) Reinstatement of inactive license after exemption. The following chart illustrates the requirements for reinstatement based on the length of time a license has been inactive.

An applicant shall satisfy the following requirements:	1 renewal	2 renewals	3 renewals
Submit written application for reinstatement to the board	Required	Required	Required
Pay the current renewal fee	\$80	\$80	\$80
Pay the reinstatement fee	\$50	\$50	\$50
Furnish evidence of full-time practice in another state of the U.S. or District of Columbia and completion of continuing education OR Furnish evidence of completion of continuing education OR Furnish evidence of successful completion of the National Teacher Examination within one year immediately prior to submission of application for reinstatement	Current valid license and 30 hours 30 hours Successful completion of examination	Current valid license and 60 hours 60 hours Successful completion of examination	Current valid license and 90 hours 90 hours Successful completion of examination
Total fees and continuing education hours required for reinstatement:	\$130 and 30 hours	\$130 and 60 hours	\$130 and 90 hours

645—300.12(272C) Lapsed licenses.

300.12(1) If the renewal fee(s) and continuing education report are received more than 30 days after the license renewal expiration date, the license is lapsed. An application for reinstatement accompanied by the reinstatement fee, the renewal fee(s) for each biennium the license is lapsed and the late fee for failure to renew before expiration must be filed with the board. The licensee may be subject to an audit of the licensee's continuing education report.

300.12(2) Licensees who have not fulfilled the requirements for license renewal or for an exemption in the required time frame will have a lapsed license and shall not engage in the practice of speech pathology or audiology. Practicing without a license may be cause for disciplinary action.

300.12(3) In order to reinstate a lapsed license, licensees shall comply with all requirements for reinstatement as outlined in 645—303.6(147).

300.12(4) After the reinstatement of a lapsed license, the licensee shall renew at the next scheduled renewal cycle and complete the continuing education required for the biennium.

300.12(5) Verifications of license(s) are required from any state in which the licensee has practiced since the Iowa license lapsed.

300.12(6) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 renewals	3 or more renewals
Submit written application for reinstatement	Required	Required	Required
Pay the renewal fee(s)	\$80	\$160	\$240
Pay the late fee	\$50	\$50	\$50
Pay the reinstatement fee	\$50	\$50	\$50
Complete continuing education requirements during the period since the license lapsed	30 hours	60 hours	90 hours
Total fees and continuing education hours required for reinstatement:	\$180 and 30 hours	\$260 and 60 hours	\$340 and 90 hours

645—300.13(17A,147,272C) License denial.

300.13(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined in these rules shall specifically describe the facts to be contested and determined at the hearing.

300.13(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent proce-

dures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C.

These rules are intended to implement Iowa Code chapters 17A, 147 and 272C.

ITEM 3. Rescind and reserve 645—Chapter 302.

ITEM 4. Adopt new paragraph 303.3(2)“g” as follows:

g. An applicant shall provide official transcripts indicating successful completion of academic courses which apply to the field of speech pathology and audiology in order to receive the following continuing education credits:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

ITEM 5. Amend rule 645—303.6(147) as follows:

645—303.6(147) 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 a 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. Reinstatement of the lapsed license may be granted by the board if the applicant:

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

2. Pays all of the following fees to a maximum of \$350:

• Renewal fees ~~then~~ due;

• ~~Late fees~~ *The late fee which have has been assessed by the board for failure to renew;* and

• ~~Reinstatement fees~~ *The reinstatement fee which have has been assessed by the board for failure to renew;* and

3. Provides evidence of:

• ~~satisfactory~~ *Satisfactory* completion of Iowa continuing education requirements computed by multiplying 30 times the number of ~~years~~ *bienniums* since the license had lapsed to a maximum of 90 hours; ; *or*

• *Successful completion of the National Teacher Examination in speech pathology or audiology within one year immediately prior to the submission of application for reinstatement.*

ITEM 6. Amend rule 645—303.10(147,272C) as follows:

645—303.10(147,272C) 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 speech pathology or audiology or both in the state of Iowa, satisfy the following requirements for reinstatement.

303.10(1) Submit written application for reinstatement to the board upon forms provided by the board ~~accompanied by the current license fee;~~ and

303.10(2) *Pay the reinstatement fee;*

303.10(3) *Pay the current renewal fee; and*

303.10(2 4) Furnish in the application evidence of one of the following:

a. to c. No change.

~~d. Payment of the current biennial license renewal fee and reinstatement fee.~~

ITEM 7. Adopt new 645—Chapter 304 as follows:

CHAPTER 304

DISCIPLINE FOR SPEECH PATHOLOGISTS
AND AUDIOLOGISTS

645—304.1(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in 645—13.1(272C), including civil penalties in an amount not to exceed \$1000, when the board determines that a licensee:

304.1(1) Is guilty of any of the following acts or offenses:

a. Fraud in procuring a license.

b. Professional incompetency.

c. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

d. Habitual intoxication or addiction to the use of drugs.

e. Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

f. Fraud in representations as to skill or ability.

g. Use of untruthful or improbable statements in advertisements.

h. Willful or repeated violations of the provisions of Iowa Code chapter 147.

304.1(2) Is in violation of the rules promulgated by the board.

304.1(3) Is in violation of the following code of ethics:

a. Claims of expected clinical results shall be based upon sound evidence and shall accurately convey the probability and degree of expected improvement.

b. Persons served professionally or the files of such persons will be used for teaching or research purposes only after obtaining informed consent from those persons or from the legal guardians of such persons.

c. Information of a personal or professional nature obtained from persons served professionally will be released only to individuals authorized by the persons receiving professional service or to those individuals to whom release is required by law.

d. Relationships between professionals and between a professional and a client shall be based on high personal regard and mutual respect without concern for race, religious preference, sex, or age.

e. Referral of clients for additional services or evaluation and recommendation of sources for purchasing appliances shall be without any consideration for financial or material gain to the licensee making the referral or recommendation for purchase.

f. Licensees who dispense products to persons served professionally shall provide clients with freedom of choice for the source of services and products.

g. Failure to comply with Food and Drug Administration rules 21 CFR §801.420 (April 1, 1981), "Hearing aid devices; professional and patient labeling," and 21 CFR §801.421 (April 1, 1981), "Hearing aid devices, conditions for sale."

304.1(4) Is disqualified for personal reasons:

a. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

b. Involuntary commitment for treatment of mental illness, drug addiction or alcoholism.

304.1(5) Is practicing or has practiced the profession while the license is suspended.

304.1(6) Has had a license suspended or revoked by another state.

304.1(7) Is negligent in the practice of the profession, which is a failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

304.1(8) Has committed prohibited acts consisting of the following:

- a. Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.
- b. Permitting another person to use the licensee's license for any purpose.
- c. Practicing outside the scope of a license.
- d. Verbally or physically abusing clients.

304.1(9) Has committed unethical business practices, consisting of any of the following:

- a. False or misleading advertising.
- b. Betrayal of a professional confidence.
- c. Falsifying clients' records.
- d. Billing for services which were not rendered, or charging fees which are inconsistent with any prior agreements reached with the clients.

304.1(10) Has failed to report a change of name or address within 30 days after it occurs.

304.1(11) Has submitted a false report of continuing education or has failed to submit the annual report of continuing education.

304.1(12) Has failed to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

304.1(13) Has failed to comply with a subpoena issued by the board.

This rule is intended to implement Iowa Code sections 272C.3 and 272C.4.

ITEM 8. Adopt **new** 645—Chapter 305 as follows:

CHAPTER 305
FEES

645—305.1(147) License fees. All fees are nonrefundable.

305.1(1) Licensure fee for license to practice speech pathology or audiology, temporary clinical license, licensure by endorsement, or licensure by reciprocity is \$100.

305.1(2) Biennial license renewal fee for each biennium is \$80.

305.1(3) Late fee for failure to renew before expiration is \$50.

305.1(4) Reinstatement fee for a lapsed license or an inactive license is \$50.

305.1(5) Duplicate license fee is \$10.

305.1(6) Verification of license fee is \$10.

305.1(7) Returned check fee is \$15.

305.1(8) Disciplinary hearing fee is a maximum of \$75.

305.1(9) Temporary clinical license renewal fee is \$50.

305.1(10) Temporary permit fee is \$25.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

ARC 0717B

**PUBLIC SAFETY
DEPARTMENT[661]**

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 100.35 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal," and Chapter 10, "Practice and Procedure Before the Department of Public Safety," Iowa Administrative Code.

New language added to Iowa Code chapter 17A by the Iowa General Assembly during its 2000 Session codifies requirements for Executive Branch agencies to adopt rules specifying procedures for requesting waivers from an agency's rules and criteria for approving or denying such requests. The amendments proposed here would replace existing rules regarding exceptions from and waivers of administrative rules of the Department of Public Safety. The amendment to Chapter 5 will govern waivers of rules of the State Fire Marshal, including rules contained in Chapters 5, 53, 54, and 59, while the amendment to Chapter 10 will govern waivers from rules of the Department other than rules of the State Fire Marshal or rules contained in the State of Iowa Building Code (Chapter 16 of the rules of the Department of Public Safety). Provisions governing waivers of rules contained in the State of Iowa Building Code are not dealt with in this Notice, but will be dealt with in separate rule making.

A public hearing on these proposed amendments will be held on June 22, 2001, at 10:30 a.m., in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at least one day prior to the public hearing.

These amendments are intended to implement Iowa Code section 17A.22.

The following amendments are proposed.

ITEM 1. Rescind subrule **5.1(5)**.

ITEM 2. Amend 661—Chapter 5 by adopting the following **new** rule:

661—5.15(17A,100) Waivers, variances, and exceptions. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules of the state fire marshal in situations where no other

PUBLIC SAFETY DEPARTMENT[661](cont'd)

more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

“Rules of the state fire marshal” include any rules contained in 661—Chapters 5, 53, 54, and 59.

“Waiver” or “variance” means an action by the fire marshal which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

5.15(1) Applicability of rule. The fire marshal may grant a waiver from a rule only if the fire marshal has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The fire marshal may not waive requirements created or duties imposed by statute.

5.15(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the fire marshal may, in the fire marshal’s sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the fire marshal finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a 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 particular rule for which the waiver is requested.

5.15(3) Filing of petition. A petition for a waiver must be submitted in writing to the fire marshal as follows:

a. License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to a license application or a pending contested case, the petition shall be submitted using a caption indicating the name of the entity or person for whom the waiver is requested and the location of property to which the proposed waiver would apply, if any.

d. File petition. A petition is deemed filed when it is received in the office of the state fire marshal. A petition should be sent or delivered to the Iowa State Fire Marshal, 621 East 2nd Street, Des Moines, Iowa 50309.

5.15(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner’s legal representative, if any.

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

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 5.15(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department of public safety or any other agency of the state of Iowa or political subdivision and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding actions of the fire marshal in similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.

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

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

5.15(5) Additional information. Prior to issuing an order granting or denying a waiver, the fire marshal may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the fire marshal may, on the fire marshal’s own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the fire marshal related to the waiver request.

5.15(6) Notice. The fire marshal shall acknowledge a petition upon receipt. The fire marshal shall ensure that all persons to whom notice is required by any provision of law, including the petitioner, receive notice within 30 days of the receipt of the petition that the petition is pending and a concise summary of its contents. In addition, the fire marshal may give notice to other persons. To accomplish this notice provision, the fire marshal may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

5.15(7) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

5.15(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Fire marshal discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the fire marshal, upon consideration of all relevant factors. Each petition for a waiver

PUBLIC SAFETY DEPARTMENT[661](cont'd)

shall be evaluated by the fire marshal based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the fire marshal should exercise discretion to grant a waiver of a rule.

c. Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

d. Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the fire marshal shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

e. Conditions. The fire marshal may place on a waiver any condition that the fire marshal finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the fire marshal, a waiver may be renewed if the fire marshal finds that grounds for a waiver continue to exist.

g. Time for ruling. The fire marshal shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the fire marshal shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the fire marshal to grant or deny a petition within the required time period shall be deemed a denial of that petition by the fire marshal. However, the fire marshal shall remain responsible for issuing an order denying a waiver.

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

5.15(9) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the fire marshal is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

5.15(10) Summary reports. The fire marshal shall provide information regarding requests for waivers received pursuant to this rule to the agency rules administrator for inclusion in summary reports of requests for waivers as provided for in 661—subrule 10.222(10).

5.15(11) Cancellation of a waiver. A waiver issued by the fire marshal pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the fire marshal issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

5.15(12) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

5.15(13) Defense. After the fire marshal issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

5.15(14) Appeals. Decisions of the fire marshal pursuant to this rule may be appealed to the commissioner of public safety. Provision for appeals of proposed decisions in contested case proceedings shall apply, as provided in rule 661—10.327(17A).

5.15(15) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

5.15(16) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY, STATE FIRE MARSHAL DIVISION	
Petition by (name of petitioner) for the waiver/ variance of (insert rule citation) relating to (insert the subject matter).	} PETITION FOR WAIVER/VARIANCE

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in the answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

6. Provide information known to the petitioner regarding the fire marshal's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver.

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

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the fire marshal with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

This rule is intended to implement Iowa Code section 17A.22.

ITEM 3. Amend rule 661—10.1(17A) by adopting the following **new** definition:

"Waiver" or "variance" means an action by the department which suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

ITEM 4. Rescind rule 661—10.222(17A) and adopt in lieu thereof the following **new** rule:

661—10.222(17A) Waivers of rules. This rule outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the department of public safety in situations where no other more specific procedure provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule. Generally, more specific procedures exist for considering waivers from rules of the state fire marshal and from provisions of the state of Iowa building code.

10.222(1) Applicability of rule. The department may grant a waiver from a rule only if the department has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The department may not waive requirements created or duties imposed by statute.

10.222(2) Criteria for waiver or variance. In response to a petition completed pursuant to this rule, the department may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule if the department finds, based on clear and convincing evidence, all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a 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 pre-

scribed in the particular rule for which the waiver is requested.

10.222(3) Filing of petition. A petition for a waiver must be submitted in writing to the department as follows:

a. License application. If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted with a caption containing the name of the entity or person for whom the waiver is requested.

d. File petition. A petition is deemed filed when it is received in the department's office. A petition should be sent to the Iowa Department of Public Safety, Attention: Agency Rules Administrator, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319-0040.

10.222(4) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the entity or person for whom a waiver is being requested; the case number of or other reference to any related contested case; and the name, address, and telephone number of the petitioner's legal representative, if any.

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

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 10.222(2). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the department, other departments or agencies of the state or Iowa, or political subdivisions and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license or certificate held by the requester, any formal charges filed, notices of violation, contested case hearings, or investigations relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding the department's action in similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

h. The name, address, and telephone number of any entity or person that would be adversely affected by the granting of a petition.

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

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

10.222(5) Additional information. Prior to issuing an order granting or denying a waiver, the department may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the department may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a

PUBLIC SAFETY DEPARTMENT[661](cont'd)

representative or representatives of the department related to the waiver request.

10.222(6) Notice. The department shall acknowledge a petition upon receipt. The department shall ensure that all persons to whom notice is required by any provision of law, including the petitioner, receive notice within 30 days of the receipt of the petition, that the petition is pending and a concise summary of its contents. In addition, the department may give notice to other persons. To accomplish this notice provision, the department may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the department attesting that notice has been provided.

10.222(7) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to department proceedings for a waiver only when the department so provides by rule or order or is required to do so by statute.

10.222(8) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person or legal entity and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. Departmental discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the department, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the department should exercise its discretion to grant a waiver from a rule.

c. Narrowly tailored. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

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

e. Conditions. The department may place on a waiver any condition that the department finds desirable to protect the public health, safety, and welfare.

f. Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the department, a waiver may be renewed if the department finds that grounds for a waiver continue to exist.

g. Time for ruling. The department shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the department shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

h. When deemed denied. Failure of the department to grant or deny a petition within the required time period shall be deemed a denial of that petition by the department. However, the department shall remain responsible for issuing an order denying a waiver.

i. Service of order. Within seven days of its issuance, any order issued under this rule shall be transmitted or delivered to the petitioner or the person to whom the order per-

tains, and to any other person entitled to such notice by any provision of law.

10.222(9) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the department is authorized or required to keep confidential. The department may accordingly redact confidential information from petitions or orders prior to public inspection.

10.222(10) Summary reports. Semiannually, the department shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the department's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

10.222(11) Cancellation of a waiver. A waiver issued by the department pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the department issues an order finding any of the following:

a. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

10.222(12) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

10.222(13) Defense. After the department issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

10.222(14) Judicial review. Judicial review of the department's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

10.222(15) Sample petition for waiver. A petition for waiver filed in accordance with this chapter must meet the requirements specified herein and must substantially conform to the following form:

BEFORE THE IOWA DEPARTMENT OF PUBLIC SAFETY	
Petition by (name of petitioner) for the waiver/ variance of (insert rule citation) relating to (insert the subject matter).	}
PETITION FOR WAIVER/VARIANCE	

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ARC 0676B

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

1. Provide the name, address, and telephone number of the petitioner (person asking for a waiver or variance). Also provide the name, address, and telephone number of the petitioner's legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

2. Describe and cite the specific rule from which a waiver is requested.

3. Describe the specific waiver requested, including the precise scope and time period for which the waiver will extend.

4. Explain the relevant facts and reasons that the petitioner believes justify a waiver. Include in your answer all of the following:

- Why applying the rule would result in undue hardship to the petitioner;
- Why waiving the rule would not prejudice the substantial legal rights of any person;
- Whether the provisions of the rule subject to the waiver are specifically mandated by statute or another provision of law; and
- How substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

5. Provide a history of any prior contacts between the department, other departments or agencies of the state of Iowa, or political subdivisions and petitioner relating to the regulated activity or license that would be affected by the waiver. Include a description of each affected license held by the petitioner, any formal charges filed, any notices of violation, any contested case hearings held, or any investigations related to the regulated activity, license, registration, certification, or permit.

6. Provide information known to the petitioner regarding the department's action in similar cases.

7. Provide the name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the petition.

8. Provide the name, address, and telephone number of any person or entity that would be adversely affected by the granting of the waiver or variance.

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

10. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the department with information relevant to the waiver.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

This rule is intended to implement Iowa Code section 17A.22.

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 692A.10, the Department of Public Safety hereby gives Notice of Intended Action to amend Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

2001 Iowa Acts, House File 550, which was recently passed by the General Assembly, was signed into law by Governor Thomas J. Vilsack on April 24, 2001, and took effect immediately. House File 550 adds an offense to the list of those requiring registration with the Iowa Sex Offender Registry. Violations of Iowa Code section 709C.1, subsection 1, paragraph "a," will now require registration. This section deals with "criminal transmission of human immunodeficiency virus," and subsection 1, paragraph "a," deals specifically with transmission of the virus through "intimate contact." House File 550 adds the offense of criminal transmission of human immunodeficiency virus through intimate contact to the list of "aggravated offenses" which require registration with the Iowa Sex Offender Registry for life.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0677B**. The content of that submission is incorporated by reference.

A public hearing on the proposed amendment will be held on June 22, 2001, at 9:30 a.m. in the Third Floor Conference Room, Wallace State Office Building, East 9th and Grand, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us at least one day prior to the public hearing.

Any written comments or information regarding the proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at least one day prior to the public hearing.

This amendment is intended to implement Iowa Code section 692A.1 as amended by 2001 Iowa Acts, House File 550.

ARC 0678B**PUBLIC SAFETY
DEPARTMENT[661]****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 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 16, "State of Iowa Building Code," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

A fee schedule for building code plan reviews was recently adopted by the Building Code Commissioner, acting with the approval of the Building Code Advisory Council. The adopted rule was published in the Iowa Administrative Bulletin on November 29, 2000, as **ARC 0314B**. That rule making inadvertently omitted two items from the fee schedule which had been approved by the Building Code Advisory Council. Emergency rule making was undertaken to correct that omission. The emergency rule was published in the Iowa Administrative Bulletin on April 18, 2001, as **ARC 0615B**, and adopted the fees omitted from the schedule adopted in the prior rule making. The fees originally omitted are for sprinkler plan reviews and for fire alarm reviews, each of which has a flat fee of \$100. The emergency rule making was effective April 1, 2001. The amendment proposed here is identical to the emergency rule making undertaken in **ARC 0615B**. This Notice of Intended Action is being published to allow for public comment on the amendment adopted through emergency procedures in **ARC 0615B**. The two fees which were omitted from the published schedule and which are proposed here are exceptions to the general approach of charging for plan reviews based on the square footage covered by the plan under review and will always result in lower fees being assessed to those whose plans are being reviewed only for fire alarms or sprinklers than would be the case without these fees being adopted.

A public hearing on this proposed amendment will be held on June 22, 2001, at 10 a.m., in the Third Floor Conference Room of the Wallace State Office Building, East 9th and Grand, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319 by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated, or may be submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at least one day prior to the public hearing.

This amendment is intended to implement Iowa Code section 103A.23.

The following amendment is proposed.

Amend subrule **16.131(2)** by rescinding paragraph "c" and adopting in lieu thereof the following **new** paragraph:

c. The fees for completion of building code plan reviews, which shall be reviews for compliance with 661—Chapter 5 and 661—Chapter 16, excluding mechanical, electrical, plumbing, and accessibility provisions, shall be calculated as follows:

	Preliminary Plan Review Meeting (Optional)	Plan Review Fee	Plan Review Fee Including Optional Preliminary Plan Review Meeting
AREA IN SQUARE FEET	Cost	Cost	Cost
Up to 5,000	\$75	\$200	\$275
5,001-10,000	\$100	\$300	\$400
10,001-20,000	\$125	\$400	\$525
20,001-50,000	\$150	\$500	\$650
50,001-100,000	\$200	\$600	\$800
100,001-150,000	\$200	\$1,000	\$1,200
150,001-200,000	\$200	\$1,200	\$1,400
200,001-250,000	\$200	\$1,400	\$1,600
250,001-300,000	\$250	\$1,600	\$1,850
300,001-350,000	\$250	\$1,800	\$2,050
350,001-400,000	\$250	\$2,000	\$2,250
400,001-450,000	\$300	\$2,200	\$2,500
More than 450,000	\$300	\$2,400	\$2,700
Special Limited Reviews			Fee
Sprinkler Plan Review			\$100
Fire Alarm Review			\$100

Payment of the assigned fee shall accompany each plan when submitted for review. Payment may be made by credit card, money order, check or draft made payable to the "Iowa Department of Public Safety—Building Code Bureau".

**REVENUE AND FINANCE
DEPARTMENT[701]****Public Notice**

Pursuant to the authority of Executive Order Number 8, the Department of Revenue and Finance hereby gives notice of a public hearing scheduled to consider existing rules of the Department. The Department has adopted an Administrative Rules Review Plan, as provided in Executive Order Number 8, which specifies a schedule for consideration of all existing Department rules. Part of the rules review plan is to conduct public hearings to receive comments by interested parties. The hearings are for the sole purpose of receiving comments on all existing administrative rules.

The following public hearings are scheduled:

June 21, 2001, 10 a.m. to 12 noon, at the Hoover State Office Building, East Thirteenth and Walnut, Fourth Floor Conference Rooms, Des Moines, Iowa 50319.

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

June 21, 2001, 1 to 3 p.m., at the following tentatively scheduled interactive Iowa Communications Network (ICN) locations:

Area Education Agency
1400 2nd St. N.W.
Elkader, Iowa

Dubuque Community School District—Forum
2300 Chaney
Dubuque, Iowa

North Iowa Area Community College—2
500 College Drive
Mason City, Iowa

Spencer High School
800 E. 3rd St.
Spencer, Iowa

Orange City Public Library
112 Albany Street S.E.
Orange City, Iowa

Area Education Agency
909 S. 12th St.
Marshalltown, Iowa

University of Northern Iowa—2
Schindler 130A
Corner of Hudson Road and 23rd St.
Cedar Falls, Iowa

Public Library
321 Main St.
Davenport, Iowa

Public Library
500 1st St. S.E.
Cedar Rapids, Iowa

DMACC Campus
906 North Grant Road
Carroll, Iowa

Department of Education Classroom
Grimes State Office Building
Des Moines, Iowa

Public Library
400 Willow Ave.
Council Bluffs, Iowa

Matilda Gibson Memorial Library
200 W. Howard St.
Creston, Iowa

National Guard Armory
2858 N. Court Road
Ottumwa, Iowa

Western Hills Area Education Agency 12
1520 Morningside Ave.
Sioux City, Iowa

Algona High School
600 S. Hale
Algona, Iowa

Public Library
605 First Ave. N.
Fort Dodge, Iowa

Please note, some of the listed ICN locations may not have personnel available to assist in the initiation or termination of the ICN broadcast. However, any interested party wishing to make comments or view the interactive broadcast can manually initiate and terminate the broadcast via a switch on the wall at each listed ICN site.

Interested parties may present their views orally or in writing. Persons who wish to appear and make an oral presentation at any of the indicated locations must notify the Department of such an intention by June 20, 2001, either in writing, or by E-mail or telephone. Written notice may be sent to the Policy Section, Department of Revenue and Finance, P.O. Box 10457, Des Moines, Iowa 50306, or an E-mail may be sent to jerri.devries@idrf.state.ia.us, or notice may be made by telephone at (515)281-4250.

Written comments or information regarding the rules must be sent by June 29, 2001, to the Policy Section, Department of Revenue and Finance, P.O. Box 10457, Des Moines, Iowa 50306.

For further information regarding this hearing please contact Jerri DeVries, Policy Section, at (515)281-3194.

ARC 0702B

REVENUE AND FINANCE DEPARTMENT[701]

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 421.5 and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 4, “Multi-level Marketer Agreements,” Iowa Administrative Code.

Subparagraph 4.1(4)“b”(1) is amended by adding language clarifying that the Department has the authority to audit multilevel marketers for tax periods prior to the effective date of the multilevel marketer agreement for which the multilevel marketer held a permit with the Department.

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of this amendment would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than July 2, 2001, to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before June 29, 2001. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue and Finance, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to orally convey their views should contact the Policy Section, Compliance Division, Department of Revenue and Finance, at (515)281-4250 or at the Department of Revenue and Finance offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by June 22, 2001.

This amendment is intended to implement Iowa Code sections 422.5 and 422.68.

The following amendment is proposed.

Amend subparagraph 4.1(4)"b"(1) as follows:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, *unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.*

ARC 0697B**TRANSPORTATION
DEPARTMENT[761]****Notice of Intended Action**

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 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 405, "Salvage," Iowa Administrative Code.

Motor vehicle control numbers will no longer be listed on certificates of title and registration receipts. A motor vehicle control number is the owner's driver's license number, social security number or federal employer's identification number. Items 1 and 3 implement this change.

2000 Iowa Acts, chapter 1047 (Iowa Code sections 321.24 and 322G.12), provides for a designation to appear on titles of vehicles that are returned to the manufacturer under the lemon law of this state or a similar law of another state and then retitled. The bill also permits the Department to determine that other designations supersede the required designation. Item 16 implements this legislation. Items 2, 4 and 5 make corresponding amendments.

If an applicant for a certificate of title cannot provide the required supporting documents, a bonding procedure is used. The Department searches the state files to determine if there is an owner of record for the vehicle. Under the current

procedure, the applicant is required to send a letter to the owner of record. Under the revised procedure, the Department will notify the owner of record. Items 7 and 8 implement this change.

Items 9, 12, 14, 17 and 18 amend the rules to extend the time allowed to transfer titles without penalty. These changes are being made to agree with the Iowa Code. Applicable Iowa Code sections are 321.25, 321.46, 321.49 and 321.52.

Item 13, subrule 400.45(2) is being amended to add a reference to Iowa Code section 321.101A. This Code section provides that the county treasurer may revoke the registration and registration plates if registration fees are paid by check and the check is not honored by the payer's financial institution.

Other amendments to these rules update Iowa Code and Iowa Acts citations.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: julie.fitzgerald@dot.state.ia.us.
5. Be received by the Director's Staff Division no later than June 19, 2001.

A meeting to hear requested oral presentations is scheduled for Thursday, June 21, 2001, at 10 a.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later than July 2, 2001, 32 days after publication of this Notice in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend subrule 400.3(2) as follows:

400.3(2) Motor vehicle control number.

a. If the applicant is an individual:

(1) The individual's driver's license number and social security number shall be listed on the application form. If the individual does not have a social security number but has a passport, the passport number shall be listed. If the individual does not have a driver's license, a social security number or a passport, the department shall assign a unique, temporary motor vehicle control number valid for two months. Before the expiration of two months, the individual shall return

TRANSPORTATION DEPARTMENT[761](cont'd)

to the county treasurer's office and report the newly acquired driver's license, social security or passport number.

(2) The individual's Iowa driver's license number is the motor vehicle control number. If the individual does not have an Iowa driver's license, the individual's social security number is the motor vehicle control number.

b. If the applicant is a partnership, corporation, association, or governmental subdivision, the federal employer's identification number shall be listed on the application form. This number is the entity's motor vehicle control number. If the organization does not have a federal employer's identification number, the department shall assign a unique motor vehicle control number.

c. ~~Motor~~ *The motor vehicle control numbers are number will not appear on the certificate of title and registration receipt issued for the vehicle. However, the motor vehicle control number is coded and listed on the department's title and registration records for the vehicle as follows:*

- 1 - Iowa driver's license number
- 2 - Social security number
- 3 - Federal employer's identification number

~~If an individual has neither an Iowa driver's license number nor a social security number, a motor vehicle control number shall not be listed on the title and registration.~~

ITEM 2. Amend rule 761—400.7(321), introductory paragraph, as follows:

761—400.7(321) Information shown appearing on title and registration. In addition to the requirements of Iowa Code sections 321.24, 321.52, and 321.71 and 322G.12, and rules 761—Chapter 405, the following information shall be shown on a certificate of title or registration receipt *shall contain the following information* when applicable:

ITEM 3. Amend subrule 400.7(2) as follows:

400.7(2) Owner's motor vehicle control number and code, as explained in subrule 400.3(2), and registration *Registration* month, as explained in subrule 400.3(4).

ITEM 4. Amend subrule **400.7(4)** by rescinding paragraph "f" and relettering paragraphs "g" to "k" as "f" to "j."

ITEM 5. Amend rule 761—400.7(321) by adopting new subrule 400.7(10) and amending the implementation clause as follows:

400.7(10) The designation required by rule 761—400.71(321) or 761—Chapter 405. A vehicle may have no more than one designation. The referenced rules explain which designation takes precedence when more than one designation could apply.

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.48, 321.52, 321.71, and 321.124 and 322G.12.

ITEM 6. Amend rule **761—400.8(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 321.50(4) as amended by 1999 Iowa Acts, Senate File 203, section 9.

ITEM 7. Amend paragraph **400.13(3)"b"** as follows:

b. ~~If a record is found, the applicant shall be advised to send a certified letter return receipt requested to the owner of record at the last known address stating that the applicant is the present owner of the vehicle and requesting a duplicate title with an assignment to the applicant on the reverse side. The applicant shall submit the returned receipt to the department. If a record is found, the department shall notify by~~

first-class mail the owner of record, at the owner's last-known address, that an application for a bonded certificate of title has been received. The notice shall also state that the owner of record may assert the owner's right to claim the vehicle or to waive any further claim. If the department receives no response from the owner of record within ten days after the date of mailing or receives a waiver of further claim to the vehicle, the department will continue processing the bond application.

ITEM 8. Amend subrule 400.13(5) as follows:

400.13(5) Disapproval. If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, or the owner of record asserts a claim for the vehicle, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

ITEM 9. Amend subrules 400.19(1) and 400.19(2) as follows:

400.19(1) Temporary use of vehicle without plates. A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who does not possess registration plates which may be assigned to and displayed on the vehicle may operate or permit the operation of the vehicle not to exceed ~~15~~ 30 days from the date of purchase or transfer without registration plates displayed thereon, if ownership evidence is carried in the vehicle.

400.19(2) Temporary use of vehicle without registration card. A person who acquires a vehicle which is currently registered or in a dealer's inventory at the time of sale and who has possession of plates which may be attached to the vehicle acquired may operate or permit the operation of the vehicle not to exceed ~~30 days~~ 45 days from the date of purchase or transfer without a registration card, if ownership evidence is carried in the vehicle.

ITEM 10. Amend rule **761—400.19(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.25, 321.33 and 321.46.

ITEM 11. Amend rule **761—400.28(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code subsection 321.1(76) and section 321.121 and 1999 Iowa Acts, Senate File 203, section 3.

ITEM 12. Amend subrule 400.44(2) as follows:

400.44(2) Vehicle purchased. The penalty on the registration fee shall accrue from the first day of the month following the date of purchase, unless the application for a certificate of title is submitted within ~~15~~ 30 days after the date of purchase.

ITEM 13. Amend rule 761—400.45(321) by amending subrules 400.45(2) and 400.45(3) and the implementation clause as follows:

400.45(2) When the registration of a vehicle has been revoked as provided in Iowa Code ~~section~~ sections 321.101 and 321.101A, the registration fee and penalty shall accrue as if the plates had never been issued, unless waiver of registration fees and penalties is specifically provided for in Iowa Code chapter 321.

400.45(3) In accordance with Iowa Code ~~section~~ sections 252J.8 and 1998 Iowa Acts, chapter 1081, section 6 261.126, the department shall suspend or deny the issuance or renewal

TRANSPORTATION DEPARTMENT[761](cont'd)

of registration and plates upon receipt of a certificate of non-compliance from the child support recovery unit or the college student aid commission.

a. The suspension or denial shall become effective 30 days after notice to the vehicle owner and continue until the department receives a withdrawal of the certificate of non-compliance from the child support recovery unit or the college student aid commission.

b. If a person who is the named individual on a certificate of non-compliance subsequently purchases a vehicle, the vehicle shall be titled and registered, but the registration shall be immediately suspended.

This rule is intended to implement Iowa Code sections 252J.1, 252J.8, 252J.9, 261.126, 321.127, and 321.101 and 321.101A 1998 Iowa Acts, chapter 1081, sections 6 and 7.

ITEM 14. Amend subrule 400.60(2) as follows:

400.60(2) Credit for transfer to spouse, parent or child. Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within ~~15~~ 30 days after the date of transfer. The registration receipt, showing assignment to the applicant, shall be submitted with the application. If the owner is deceased, credit may be transferred under rule 400.14(321) of this chapter.

ITEM 15. Amend rule ~~761—400.70(321)~~, implementation clause, as follows:

This rule is intended to implement Iowa Code section 321.20B and 1998 Iowa Acts, chapter 1121, section 2.

ITEM 16. Adopt new rule 761—400.71(321) as follows:

761—400.71(321) Lemon law designation.

400.71(1) A certificate of title issued to a manufacturer of a motor vehicle pursuant to Iowa Code section 322G.12 shall contain the designation of "lemonbuyback."

400.71(2) When a motor vehicle has been titled in accord with subrule 400.71(1), the "lemonbuyback" designation shall be carried forward to all subsequent Iowa titles and registration receipts issued for the motor vehicle. EXCEPTION: see subrule 400.71(4).

400.71(3) If the prior certificate of title for a motor vehicle is a foreign title indicating that the vehicle was returned to the manufacturer pursuant to Iowa Code chapter 322G or a law of another state similar to chapter 322G, the new Iowa title and registration receipt issued for the vehicle and all subsequent Iowa titles and registration receipts issued shall contain the designation of "lemonbuyback." EXCEPTION: see subrule 400.71(4).

400.71(4) Notwithstanding subrules 400.71(2) and 400.71(3), when a designation of "prior salvage," "rebuilt," "flood," "fire," "vandalism" or "theft" is required pursuant to 761—Chapter 405, that designation supersedes a "lemonbuyback" designation.

This rule is intended to implement Iowa Code sections 321.24, 321.52 and 322G.12.

ITEM 17. Amend paragraph **405.3(2)"c"** as follows:

c. Upon assignment, the transferee shall apply for a new salvage title within ~~15~~ 30 days after the date of assignment unless, within this time period, application for a regular title is made or a junking certificate is obtained.

ITEM 18. Amend subrule 405.6(3) as follows:

405.6(3) Application. Application for a salvage title shall be made within ~~15~~ 30 days after the date of assignment to the transferee.

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:

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%
December 1, 2000 — December 31, 2000	7.75%
January 1, 2001 — January 31, 2001	7.75%
February 1, 2001 — February 28, 2001	8.00%
March 1, 2001 — March 31, 2001	7.25%
April 1, 2001 — April 30, 2001	7.00%
May 1, 2001 — May 31, 2001	7.00%

ARC 0679B

UTILITIES DIVISION[199]

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 474.5 and 476.2 (2001), the Utilities Board (Board) gives notice that on May 1, 2001, the Board issued an order in Docket No. RMU-01-4, In re: Service of Filings on Office of Consumer Advocate, "Order Commencing Rule Making," to receive public comment on the adoption of revisions to the Board's existing rule 199 IAC 1.8(4)"c" regarding service of documents on the Consumer Advocate Division of the Department of Justice (Consumer Advocate).

Consumer Advocate is charged by statute with several duties, including the duty of representing the public in all proceedings before the Board (see Iowa Code section 475A.2(2)). In order to fulfill that obligation, Consumer Advocate is entitled to service of all documents required by statute or rule to be served on parties in proceedings before the Board and of all notices, petitions, applications, complaints, answers, motions, and other pleadings filed pursuant to statute or rule with the Board (see Iowa Code section 475A.5). The Board's rules, specifically 199 IAC 1.8(4)"c," expand on the statutory requirement by requiring that three copies of all notices, motions, or pleadings filed with the Board must be served on Consumer Advocate, either by separate mailing or by separate envelope, if personally delivered.

Despite these provisions, the Board is informed by Consumer Advocate that a significant percentage of all filings with the Board are not served upon Consumer Advocate. Consumer Advocate suggests four possible reasons for this

UTILITIES DIVISION[199](cont'd)

situation and proposes certain amendments to the Board's rules to address the situation.

First, Consumer Advocate notes that the existing rules do not explicitly require service of all documents; instead, the rules apply only to "notices, motions, or pleadings." Second, the rule does not explicitly state that the obligation to serve Consumer Advocate is the obligation of the party, rather than the Board, which may lead some parties to believe the Board provides copies to Consumer Advocate. Third, some new parties may not be aware of Consumer Advocate. Finally, Consumer Advocate suggests that some new parties may only review the specific Board rules with which they are concerned and are therefore unaware of the requirements of paragraph 1.8(4)"c."

Consumer Advocate believes two basic rule changes would improve compliance with the statutory service requirement. First, paragraph 1.8(4)"c" could be amended to explicitly prescribe the duty to serve all documents on Consumer Advocate. Second, every chapter of the Board's rules could be amended by adding an initial statement requiring that every document filed with the Board must be served on Consumer Advocate.

The Board will propose Consumer Advocate's requested amendment to paragraph 1.8(4)"c." Revising paragraph 1.8(4)"c" as shown below would expand the scope of the rule to all documents or other materials filed with the Board. Further, the amended rule would clearly state that it is the obligation of each party, rather than the Board, to serve Consumer Advocate. These changes will address the first two problems identified by Consumer Advocate.

The Board will not propose the addition of the requested statement to every chapter of the Board's rules. Adding duplicative language to the beginning of each of the 39 chapters of the Board's rules is unlikely to result in benefits that will justify the cost and inconvenience. Parties before the Board who are unaware of Consumer Advocate and who are focused on only the particular rules applicable to their specific

situation are just as unlikely to notice a statement at the beginning of each chapter (when the rule they are reading may be 20 or 30 pages away) as they are to miss paragraph 1.8(4)"c." The costs and burdens associated with adding standard language to each chapter outweigh the minimal benefit likely to result. The problems of service by parties who are not aware of the existence of Consumer Advocate should occur only once or twice with each party and can best be addressed as each individual situation occurs.

Finally, the Board proposes to eliminate the requirement that a separate copy of each filing be served on the Board's general counsel. This has proven to be unnecessary.

Any interested person may file a written statement of position on the proposed amendment no later than June 19, 2001, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should be directed to the Acting Executive Secretary, Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

This amendment is intended to implement Iowa Code sections 474.5, 475A.5, and 476.2.

Amend **199 IAC 1.8(4)"c"** as follows:

c. Parties entitled to service. ~~All parties~~ *A party or other person filing a notice, motion, or pleading in any proceeding shall serve the notice, motion, or pleading on all other parties, including the general counsel and the consumer advocate, shall be served with all notices, motions, or pleadings filed or issued in the proceeding. A party formally filing any document or other material with the board shall serve three copies on the consumer consumer advocate at the same time as the filing is made with the board and by the same delivery method used for filing with the board. shall be served three copies, either by separate mailing addressed to The address of the consumer advocate is Office of Consumer Advocate, 310 Maple Street, Des Moines, Iowa 50319-0063, or by separate envelope delivered to the office of consumer advocate.*

ARC 0687B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 234.6 and 238.16, the Department of Human Services hereby amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," and Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

These amendments allow college graduates who have a bachelor's degree in social work to provide specified services under the Rehabilitative Treatment Services Program or through licensed child-placing agencies without meeting the experience requirements applicable to those who have a bachelor's degree in a human services field related to social work. Social work graduates have completed a practicum as part of their education that provides experience in these types of services.

The Board of Social Work Examiners has reviewed and approved these changes. These changes will expand the pool of qualified applicants for the providers of these services. Providers have indicated that locating qualified staff is an issue in the current economy.

These amendments do not provide for waivers in specified situations because the amendments confer a benefit by expanding the pool of personnel qualified to provide these services.

The Department of Human Services finds that notice and public participation are impracticable because these changes are needed immediately because of the shortage of qualified social workers. Waiving the notice and public participation requirement will allow facilities to recruit and hire new graduates to fill staff vacancies. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit by expanding the pool of qualified applicants for the providers of these services. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These amendments are also published herein under Notice of Intended Action as **ARC 0688B** to allow for public comment.

The Council on Human Services adopted these amendments May 9, 2001.

These amendments are intended to implement Iowa Code sections 234.6 and 234.38 and Iowa Code chapter 238.

These amendments became effective May 9, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **108.4(3)** as follows:

Adopt the following **new** paragraph "b" and reletter existing paragraphs "b" through "d" as paragraphs "c" through "e":

b. Graduation from an accredited four-year college, institute or university with a bachelor's degree in social work from a program accredited by the council on social work education.

Amend relettered paragraph "c" as follows:

c. Graduation from an accredited four-year college or university with a bachelor's degree in ~~social work or related~~ a human service field *related to social work* and the equivalent of two years of full-time experience in social work or experience in the delivery of human services in a public or private agency.

ITEM 2. Amend subrule **185.10(1)**, paragraph "a," as follows:

Adopt the following **new** subparagraph (2) and renumber existing subparagraphs (2) through (6) as subparagraphs (3) through (7):

(2) Graduation from an accredited four-year college, institute or university with a bachelor's degree in social work from a program accredited by the council on social work education.

Amend renumbered subparagraph (3) as follows:

(3) Graduation from an accredited four-year college, institute or university with a bachelor's degree in ~~social work or related~~ a human service field *related to social work* and the equivalent of two years of full-time experience in social work or experience in the delivery of human services in a public or private agency.

[Filed Emergency 5/9/01, effective 5/9/01]

[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0677B

PUBLIC SAFETY
DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 692A.10, the Department of Public Safety hereby amends Chapter 8, "Criminal Justice Information," Iowa Administrative Code.

2001 Iowa Acts, House File 550, which was recently passed by the General Assembly, was signed into law by Governor Thomas J. Vilsack on April 24, 2001, and took effect immediately. House File 550 adds an offense to the list of those requiring registration with the Iowa Sex Offender Registry. Violations of Iowa Code section 709C.1, subsection 1, paragraph "a," will now require registration. This section deals with "criminal transmission of human immunodeficiency virus," and subsection 1, paragraph "a," deals specifically with transmission of the virus through "intimate contact." House File 550 adds the offense of criminal transmission of human immunodeficiency virus through intimate contact to the list of "aggravated offenses" which require registration with the Iowa Sex Offender Registry for life.

Pursuant to Iowa Code subsection 17A.4(2), the Department finds that notice and public participation prior to the adoption of this amendment are impracticable. The statutory requirement for registration of persons convicted of violations of Iowa Code section 709C.1, subsection 1, paragraph "a," became effective on April 24, 2001. It is desirable to bring the rules regarding registration into compliance with the statutory requirements in order to reduce any confusion regarding the registration requirements.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department further finds that the normal effective date of this amendment, 35 days after publication, should be waived and this amendment be made effective May 1, 2001, after filing with the Administrative Rules Coordinator. This amendment confers a benefit upon the public by avoiding potential confusion which may arise if registration requirements specified by administrative rules differ from the underlying statutory requirements.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

This amendment is also published herein under Notice of Intended Action as **ARC 0676B** to allow for public comment.

This amendment is intended to implement Iowa Code section 692A.1 as amended by 2001 Iowa Acts, House File 550.

This amendment became effective on May 1, 2001.

The following amendment is adopted.

Amend subrule **8.302(11)** by adopting the following **new** paragraph:

i. Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph "a."

[Filed Emergency 4/30/01, effective 5/1/01]

[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0698B**CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.207, the Department of Corrections hereby amends Chapter 20, "Institutions Administration," Iowa Administrative Code.

This amendment expands the violator program to include up to 150 beds for male youthful offenders in the Redirecting Inmate Values, Energy, Relationships and Skills (RIVERS) program at the Fort Dodge Correctional Facility.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0551B** on March 21, 2001.

A public hearing was held on April 10, 2001. No one attended the hearing, and no written or oral comments were received. The rule catchwords were changed to reflect the incorporation of provisions for shock probation programs into the rule. The catchwords now read "Violator/shock probation programs." Department of Corrections staff requested that paragraph 20.18(8)"e" be revised to allow receipt of money orders/cashier's checks because violators are currently allowed to receive money orders/cashier's checks. Paragraph 20.18(8)"e" is amended as follows:

"e. Rule 20.5(904) ~~Gifts to inmates~~ *Money orders/cashier's checks for offenders. Money orders/cashier's checks for offenders are allowed but will be subject to a restitution plan, child support orders, fines, court costs and fees. Offenders will not be granted any of the privileges of rule 20.5(904).*"

As a result of the change to paragraph 20.18(8)"e," subparagraph 20.18(8)"d"(2) was also revised as follows:

"(2) Offenders will not receive an allowance. ~~and will not be allowed to receive outside source moneys.~~ Therefore, offenders will be provided writing materials and postage for two letters per week."

The Department of Corrections Board adopted this amendment on May 4, 2001.

This amendment will become effective on July 4, 2001.

This amendment is intended to implement Iowa Code section 904.207.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [20.18] is being omitted. With the exception of the changes noted above, this amendment is identical to that published under Notice as **ARC 0551B**, IAB 3/21/01.

[Filed 5/10/01, effective 7/4/01]
[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0681B**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 7,

"Appeals and Hearings," and Chapter 103, "Eldora Training School," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments May 9, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 21, 2001, as **ARC 0486B**.

These amendments establish procedures governing the Department's responsibilities to notify juvenile sexual offenders of their duty to register with the Iowa Sex Offender Registry under Iowa Code chapter 692A and to complete risk assessments used to determine the risk that offenders required to register pose of reoffending. The level of risk assigned to the offender is the basis for determining whether affirmative public notification (community notification) by a criminal or juvenile justice agency may take place as well as for determining the extent of the community notification.

The Department of Public Safety proceeds with affirmative public notification as provided by statute based on the level of risk. For offenders classified as "low risk," registry information may be distributed to a criminal or juvenile justice agency or to members of the public upon requests made through a criminal or juvenile justice agency or by electronic access as provided in Iowa Code subsection 692A.13(3).

For offenders classified as "at risk," including "moderate risk" or "high risk," registry information may be provided to any criminal or juvenile justice agency and to the public, which includes public and private agencies, organizations, public places, public and private schools, child care facilities, religious and youth organizations, neighbors, and employers.

If an offender is classified as "high risk," information may also be provided to neighborhood associations or at community meetings.

The Iowa Sex Offender Registry was established by the General Assembly in 1995. All adults and most juveniles who have been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in Iowa or in another state, or in a federal, military, tribal, or foreign court, and persons required to register in another state under the state's sex offender registry are required to register. Juveniles who have been convicted of a qualifying criminal offense are required to register unless the juvenile court finds that the person should not be required to register.

A Risk Assessment Committee is located in each of the State Training Schools. The director of each Risk Assessment Committee is responsible for notifying juveniles who are under the control or supervision of the Department and who have been convicted of a qualifying criminal offense of their duty to register and, with the help of the risk assessment committees, for conducting risk assessments for those juveniles required to register. The director of the Risk Assessment Committee submits the initial registration form to the Division of Criminal Investigation, Department of Public Safety, unless the juvenile court finds that the person should not be required to register.

These amendments do not provide for waivers of the requirements specified herein because these requirements are mandated by Iowa Code chapter 692A.

The following revisions were made to the Notice of Intended Action:

The Preamble was revised to specify that (1) the procedures govern the Department's responsibilities for juveniles rather than juveniles and adults and (2) affirmative public notification may take place by a criminal or juvenile justice agency and not just by the Department of Public Safety and Department of Corrections.

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In rule 441—103.31(692A), definitions of “offender” and “registration” were revised to allow for the submittal of registration forms by the state training schools. The definition of “aggravated offense” was revised to add an offense to the list of those requiring registration with the Iowa Sex Offender Registry following passage of 2001 Iowa Acts, House File 550.

Rule 441—103.32(692A) was revised to (1) provide for a risk assessment committee at the state training school at Toledo, as well as at Eldora, (2) include the exemption from registration as allowed by statute, and (3) allow for affirmative public notification pending exhaustion of any administrative or judicial appeal, which could change the affirmative public notification allowed.

Rule 441—103.33(692A) was revised to include the exemption from registration as allowed by statute.

Rule 441—103.34(692A) was revised to provide a time frame for completion of the risk assessment and to provide an explanation of the juvenile’s right to appeal.

Rule 441—103.35(692A) was added to provide a time frame for submission of the risk assessment documents.

These amendments are intended to implement Iowa Code chapter 692A.

These amendments shall become effective July 4, 2001.

The following amendments are adopted.

ITEM 1. Amend rule **441—7.1(17A)**, definition of “aggrieved person,” by adopting the following **new** numbered paragraph “**11**” as follows:

11. Who is contesting a risk assessment decision as provided in rule 441—103.34(692A) by alleging that the risk assessment factors have not been properly applied, the information relied upon to support the assessment findings is inaccurate, or the procedures were not correctly followed.

ITEM 2. Amend subrule **7.5(4)** by adopting the following **new** paragraph “**f**”:

f. An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

ITEM 3. Amend subrule **7.10(4)** by adopting the following **new** paragraph “**d**”:

d. In cases involving an appeal of a sex offender risk assessment, the hearing shall be held within 30 days of the date of the appeal request.

ITEM 4. Amend 441—Chapter 103 by adopting a **new** Division I, “General Policies and Procedures,” consisting of existing rules 441—103.1(218) to 441—103.21(218,242).

ITEM 5. Reserve rules **441—103.22** to **441—103.30** in Division I.

ITEM 6. Amend 441—Chapter 103 by adopting the following **new** Division II:

DIVISION II
SEX OFFENDERS

PREAMBLE

These amendments establish procedures governing the department’s responsibilities to notify juvenile sex offenders of their duty to register with the Iowa sex offender registry under Iowa Code chapter 692A and to complete risk assessments used to determine the risk that offenders required to register pose of reoffending. The level of risk assigned to the

offender is the basis for determining whether affirmative public notification (community notification) by a criminal or juvenile justice agency may take place as well as for determining the extent of the community notification.

441—103.31(692A) Definitions.

“Affirmative public notification” means any form of communication or release undertaken by the department of public safety, department of human services, or other Iowa criminal or juvenile justice agency regarding the identity or characteristics of an individual registrant or registrants. “Affirmative public notification” does not mean release of information to a criminal or juvenile justice agency or agencies nor does it mean release of information about an individual registrant in response to an inquiry about that individual based upon the name and address of the individual, as provided in Iowa Code subsection 692A.13(6).

“Aggravated offense” means a conviction for any of the following offenses:

1. Sexual abuse in the first degree in violation of Iowa Code section 709.2.
 2. Sexual abuse in the second degree in violation of Iowa Code section 709.3.
 3. Sexual abuse in the third degree in violation of Iowa Code subsection 709.4(1).
 4. Lascivious acts with a child in violation of Iowa Code subsection 709.8(1).
 5. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.
 6. Burglary in the first degree in violation of Iowa Code section 713.3(1)“d.”
 7. Kidnapping, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
 8. Murder, if sexual abuse as defined in Iowa Code section 709.1 is committed during the offense.
 9. Criminal transmission of human immunodeficiency virus in violation of Iowa Code section 709C.1, subsection 1, paragraph “a.”
- “Criminal offense against a minor” means any of the following criminal offenses or conduct:
1. Kidnapping of a minor, except for the kidnapping of a minor in the third degree committed by a parent.
 2. False imprisonment of a minor, except if committed by a parent.
 3. Any indictable offense involving sexual conduct directed toward a minor.
 4. Solicitation of a minor to engage in an illegal sex act.
 5. Use of a minor in a sexual performance.
 6. Solicitation of a minor to practice prostitution.
 7. Any indictable offense against a minor involving sexual contact with the minor.
 8. An attempt to commit an offense enumerated in this rule.
 9. Incest committed against a minor.
 10. Dissemination and exhibition of obscene material to minors in violation of Iowa Code section 728.2.
 11. Admitting minors to premises where obscene material is exhibited in violation of Iowa Code section 728.3.
 12. Stalking in violation of Iowa Code subsection 708.11(3)“b”(3), if the fact finder determines by clear and convincing evidence that the offense was sexually motivated.
 13. Sexual exploitation of a minor in violation of Iowa Code subsection 728.12(2) or (3).

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14. An indictable offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "13" of this definition.

"Department" means the Iowa department of human services.

"Iowa sex offender registry" means a central registry of sex offenders established by law in 1995 that is maintained by the department of public safety.

"Offender" means a person, including a juvenile, who is required to be registered with the Iowa sex offender registry and the sheriff of the person's county of residence.

"Other relevant offense" means any of the following offenses:

1. Telephone dissemination of obscene materials in violation of Iowa Code section 728.15.

2. Rental or sale of hard-core pornography in violation of Iowa Code section 728.4.

3. Indecent exposure in violation of Iowa Code section 709.9.

4. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "3" of this definition if committed in this state.

"Registration" means the submission of registration forms to the Iowa sex offender registry and to the sheriff of the person's county of residence.

"Risk assessment" means the method and procedures for the assessment of the risk that offenders, required to register, pose of reoffending.

"Sexual exploitation" means sexual exploitation by a counselor or therapist under Iowa Code section 709.15.

"Sexually violent offense" means any of the following indictable offenses:

1. Sexual abuse as defined under Iowa Code section 709.1.

2. Assault with intent to commit sexual abuse in violation of Iowa Code section 709.11.

3. Sexual misconduct with offenders in violation of Iowa Code section 709.16.

4. Any of the following offenses, if the offense involves sexual abuse or attempted sexual abuse: murder, attempted murder, kidnapping, burglary, or manslaughter.

5. A criminal offense committed in another jurisdiction which would constitute an indictable offense under numbered paragraphs "1" through "4" of this definition if committed in this state.

441—103.32(692A) Department responsibilities. The state training schools' risk assessment committees are located at the state training schools at Eldora, Iowa, and Toledo, Iowa. In accordance with the requirements of Iowa Code section 692A.13A, the director of each risk assessment committee shall notify juveniles under the control or supervision of the department who have been convicted of a qualifying criminal offense and who have not previously registered their duty to register with the Iowa sex offender registry and the sheriff of the juvenile's county of residence. In addition, the director of each risk assessment committee shall provide the forms for registration, and, with the risk assessment committee, shall conduct level of risk assessments or reassessments for those juveniles convicted of an offense which requires registration.

103.32(1) Procedures for notification of registration requirement and level of risk determination. The registration requirement and the determination of level of risk are two separate procedures. The director of the risk assessment committee may submit the documents for registration and the documents for determination of level of risk to the division of criminal investigation at the same time or may submit the level of risk assessment documents at a later time when the juvenile appeals the level of risk determination and has exhausted the administrative or judicial appeal process.

a. The director of the risk assessment committee shall submit the registration form to the division of criminal investigation, department of public safety, when the juvenile is released from the state training school unless the juvenile court finds that the person should not be required to register as allowed by Iowa Code subsection 692A.2(4).

b. The director of the risk assessment committee shall submit the risk assessment documents when the juvenile is released from the state training school and following the final results of any administrative or judicial appeal.

103.32(2) Exemption from registration.

a. The juvenile has the obligation to seek an exemption from the registration requirement and to prove that the juvenile deserves the exemption. To the extent a court order of adjudication or disposition is silent, the registration requirement applies.

b. The language in the order must clearly state that the juvenile is exempt from the registration requirement. If the language is not clear, the juvenile must seek a clarifying order to be exempt from the registration process.

103.32(3) Exemption from registration deferred.

a. When the judicial decision is deferred, registration shall be assumed required until the court orders otherwise.

b. If the court order defers the decision to grant an exemption from registration until treatment is completed, the language in the order should specify who tracks the case until the new court order is issued. If it is not clear who tracks the case, the juvenile must seek a clarifying order to be exempt from the registration process.

441—103.33(692A) Juveniles required to register. All juveniles who have been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in Iowa or in another state, or in a federal, military, tribal, or foreign court, and juveniles required to register in another state under the state's sex offender registry shall be required to register unless the juvenile court finds that the juvenile shall not be required to register. The director of the risk assessment committee shall facilitate registration as required by Iowa Code sections 692A.5 and 692A.14 as follows:

103.33(1) Notification. The director of the risk assessment committee shall provide Form DCI-144, Notification of Registration Requirement, which notifies offenders of their duty to register with the Iowa sex offender registry. Failure to provide offenders with Form DCI-144 does not relieve offenders of their duty to register with the Iowa sex offender registry.

103.33(2) Registration.

a. Form DCI-145, Sex Offender Registration, shall be completed by or on behalf of each offender. Registration is required when the juvenile is released from the state training school and the court has not granted an exemption from registration or still has not ruled on a deferred decision to grant an exemption from registration. The director of the risk assessment committee shall submit Form DCI-145 to the sheriff of the county in which the offender is or will be residing

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and to the division of criminal investigation, in order to satisfy the registration requirements of the Iowa sex offender registry.

b. Form DCI-145 shall also be used to report changes of residence, telephone number, or name of registrants. A completed copy of Form DCI-145 shall be submitted by the registrant to the sheriff of the county of residence each time the registrant's place of residence, telephone number, or name changes within five days of the change of residence, telephone number, or name, whether within or outside the state of Iowa.

If a registrant moves from one county to another, the registrant shall submit copies of completed Form DCI-145 reporting the change of residence to the sheriff of the prior county of residence and the sheriff of the new county of residence. The sheriff of the new county of residence shall be responsible for transmitting a copy of completed Form DCI-145 to the Iowa sex offender registry.

c. Upon initial submission of Form DCI-145, the form shall be accompanied by current photographs and fingerprints of the offender. Current photographs of the registrant shall accompany submission of Form DCI-145 upon each subsequent submission of Form DCI-145 unless the registrant's appearance has not changed significantly in the judgment of the submitting agency.

441—103.34(692A) Completion of risk assessment. All required risk assessments shall be conducted using the "Iowa Sex Offender Risk Assessment, Risk Assessment Guidelines and Commentary, and Risk Assessment Companion Guide" as adopted by the department of corrections and developed in consultation with the department of human services, the department of public safety, and the attorney general. These instruments are available upon request from the department of corrections.

The risk assessment score shall be determined following a review of appropriate documents which may include: presentence investigation report, court documents, clinical assessments, treatment records, polygraph reports, plethysmograph reports, employee records, school records, military records, child protection services records, victim's reports, hospital reports, and self-reports.

The risk assessment shall be completed within 45 days before the juvenile's release from custody or placement on probation, parole, or work release and following the completion or last day of participation in a treatment program unless it is impractical to do so as determined by the director of the risk assessment committee. The risk assessment may be completed 20 days or less before the juvenile's release when the director of the risk assessment committee determines it is impractical to complete the risk assessment following the completion or last day of participation in a treatment program.

103.34(1) Use of risk assessment score. The division of criminal investigation shall use the risk assessment score to determine the level of risk that persons required to register under Iowa Code chapter 692A pose of reoffending. Each offender shall be classified as a low, moderate, or high risk to reoffend. The level of risk assigned to the offender is the basis for determining whether affirmative public notification (community notification) by a criminal or juvenile justice agency may take place as well as for determining the extent of the community notification. The department of public safety shall proceed with affirmative public notification as provided by statute based on the level of risk.

103.34(2) Notification of right to appeal. When the risk assessment committee has completed the risk assessment for a juvenile, the director of the risk assessment committee shall notify the juvenile of the finding and of the juvenile's right to appeal by providing the juvenile a copy of the risk assessment and Form 470-3690, Notice of Sex Offender Risk Assessment Findings/Public Notification.

103.34(3) Delivery of notice. The director of the risk assessment committee shall give notice of the results of the assessment to the registrant by personal service before the juvenile's release from custody or placement on probation, parole, or work release, unless it is impracticable to give notice. No additional notice is required. Notice is deemed provided if the registrant refuses delivery of the notice. The notice shall contain the following information:

- a. The result of the risk assessment;
- b. A description of the scope of affirmative public notification which may result from the risk assessment;
- c. An explanation of the juvenile's right to appeal in accordance with procedures set forth in 441—Chapter 7;
- d. The allowable grounds for filing an appeal. The appeal request must allege one of the following:

- (1) The risk assessment factors were not properly applied.
- (2) The information relied upon to support the assessment findings is inaccurate.
- (3) The assessment procedures were not correctly followed.

103.34(4) Appeal forms available. Form 470-0487, Appeal and Request for Hearing, shall be available to the juvenile from the superintendent's office. To file an appeal, the juvenile may either complete Form 470-0487 or a written statement requesting to appeal. The juvenile may submit the form or statement to the Appeals Section, 5th Floor, Iowa Department of Human Services, 1305 E. Walnut, Des Moines, Iowa 50319-0114, to the superintendent or, in the superintendent's absence, to the clinical director.

441—103.35(692A) Affirmative public notification pending the exhaustion of administrative or judicial appeal. When the juvenile is released from the state training school and the director of the risk assessment committee has not received timely notice of any pending administrative or judicial appeal, the director of the risk assessment committee shall submit the original of the risk assessment and copies of related documents, including Form 470-3690, Notice of Sex Offender Risk Assessment Findings/Public Notification, to the division of criminal investigation. When the director of the risk assessment committee has not received timely notice of any pending administrative or judicial appeal, the director shall submit the risk assessment documents to the division of criminal investigation as follows:

1. Fifteen days or later following notification of right to appeal.
2. Forty-four days or later following the final decision of an administrative appeal and request for hearing.
3. In the event of judicial review, anytime following exhaustion of court appeal rights.

Copies of the sex offender registration and risk assessment documents, including any appeals, and documentation of the results of any appeal or court action, shall be maintained in the offender's file maintained by the department.

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These rules are intended to implement Iowa Code chapter 692A.

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ARC 0682B**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 65, "Administration," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments May 9, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on March 21, 2001, as **ARC 0543B**.

The food stamp program is based on federal regulations and statute. The Department adopts administrative rules for the food stamp program only when the state is given an option in the regulations on how to administer the program or when regulations have not been finalized to implement statute.

These amendments implement final federal regulations issued July 6, 2000, to be effective August 1, 2001. Those regulations incorporate changes regarding food stamp recipient claims. Food stamp recipient claims are established and collected against households that receive more benefits than they are entitled to receive.

The regulations published July 6, 2000, include the following provisions which the Department had previously adopted and implemented using administrative rules. These rules will be rescinded as policy is now contained in the regulations. The regulations:

- Provide that the earned income deduction shall not be allowed when a claim is calculated to determine an overissuance caused by the failure of a household to timely report earned income (subrule 65.21(5)).
- Provide that all claims for overissued food stamps can be collected by allotment reduction. Individuals not participating in the food stamp program who are 180 days delinquent in repaying their overissuance will be subject to collection action through the treasury offset program (subrule 65.21(6)).

The July 6, 2000, regulations also make the following revisions to policy:

- Change the time frames for establishing claims. Claims shall be established before the last day of the quarter following the quarter in which the overissuance or trafficking incident was discovered.
- Establish the amount of the claim for trafficking-related overissuances. Claims will be established for the value of the trafficked benefits as determined by the individual's admission, adjudication, or the documentation that forms the basis for the trafficking determination. Current policy does not include trafficking claims.
- Provide an additional source of collection. Claims can now also be collected from active, stale, or expunged

electronic benefit transfer (EBT) benefits with the recipient's permission.

- Require additional information be added to the demand letters that are sent to recipients for whom an overissuance or trafficking claim has been established. These regulations require information regarding the treasury offset program and calculation of the claim.

The Department is currently seeking a waiver to permit the Department to deviate from the requirement to include the calculation of the claim with the demand letters. In anticipation of Food and Nutrition Services approval of this waiver, the Department is proposing to include a statement on the first demand letter informing the household how to obtain a copy of the claim calculation.

These amendments do not provide for waiver in specified situations because federal food stamp law does not allow for any waivers.

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

These amendments are intended to implement Iowa Code section 234.12.

These amendments shall become effective August 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule 65.21(4) as follows:

65.21(4) Demand letters. Households ~~which~~ *that* have food stamp claims shall return the repayment agreement no later than 20 days after the date the demand letter is mailed. For agency error and inadvertent household error, households ~~which~~ *that* do not return the repayment agreement by the due date or do not timely request an appeal, allotment reduction shall occur with the first allotment issued after the expiration of the Notice of Adverse Action time period. For intentional program violation, households ~~which~~ *that* do not return the repayment agreement by the due date, allotment reduction shall occur with the next month's allotment.

The first demand letter shall contain instructions to the household on how to obtain a copy of the claim calculation.

ITEM 2. Rescind and reserve subrules **65.21(5)** and **65.21(6)**.

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ARC 0683B**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 these amendments May 9, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 24, 2001, as **ARC 0410B**. An Amended Notice of Intended Action to schedule public hearings on

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these amendments was published in the Iowa Administrative Bulletin on March 7, 2001, as **ARC 0521B**.

These amendments revise Iowa Medicaid policy regarding payment for drugs used for weight loss.

Current rules address nonpayment for anorectics (including amphetamines) used for obesity control. (See subparagraphs 78.1(2)"a"(2) and (3).) Prior to the recent introduction of Xenical (a lipase inhibitor), anorectics were the only drugs used for obesity control. As a lipase inhibitor, Xenical acts by a different pharmacological mechanism. The noticed amendment would have revised the rules to provide that payment is not made for any weight loss drug, regardless of pharmacological mechanism.

Eight public hearings were held around the state. Only five persons attended the hearings. However, the Department received 38 written comments urging that Medicaid pay for Xenical and giving reasons. As a result of those comments, the Department has reconsidered its position and will allow payment for lipase inhibitor drugs used for weight loss with prior authorization. All of the following conditions must exist for prior authorization to be granted:

- Documented failure of other weight loss programs.
- A body mass index (BMI) equal to or greater than 30.
- One or more comorbidity conditions.
- A weight management plan including diet and exercise.

Prior authorization may be granted for up to six months. Additional prior authorization may be given on an individual basis after review of medical necessity and documented significant weight loss (at least 10 percent) from the individual's weight at the beginning of the previous prior authorization period.

These amendments do not provide for a waiver of the prior authorization requirement for lipase inhibitor drugs used for weight loss or of the exclusion of other weight loss drugs in specified situations because no waiver is appropriate in any situation that can be specified regarding payment for weight loss drugs. Individuals may request a waiver of these policies under the Department's general rule on exceptions at rule 441—1.8(17A,217).

The Notice of Intended Action was revised to allow Medicaid payment for lipase inhibitor drugs used for weight loss with prior authorization.

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

These amendments shall become effective August 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule **78.1(2)**, paragraph "a," subparagraph (2), as follows:

(2) Notwithstanding subparagraph (1), payment is not made for: drugs if the prescribed use is not for a medically accepted indication as defined by Section 1927(k)(6) of the Social Security Acts; drugs used to cause anorexia, or weight gain, or weight loss (except for lipase inhibitor drugs for weight loss, with prior authorization as provided in subparagraph (3) below); drugs used for cosmetic purposes or hair growths; drugs used to promote smoking cessation; otherwise covered outpatient drugs which if the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or the manufacturer's designee; drugs described in Section 107(c)(3) of the Drug Amendments of 1962; identical, similar, or related drugs (within the meaning of Section 310.6(b)(1) of Title 21 of the Code of Federal Regulations (DESI drugs)); and drugs which are prescribed

for an individual for fertility purposes. Exceptions may be made to allow payment for fertility drugs if prescribed for a use which that meets the definition of a medically accepted indication as described previously in this subparagraph.

Further amend subrule **78.1(2)**, paragraph "a," by adopting the following **new** paragraph to the end of subparagraph (3):

Prior authorization is required for lipase inhibitor drugs for weight loss. Requests must include documentation showing failure of other weight loss programs, a body mass index (BMI) equal to or greater than 30, one or more comorbidity conditions, and a weight management plan including diet and exercise. Prior authorization may be given for up to six months. Additional prior authorizations may be given on an individual basis after review of medical necessity and documented significant weight loss (at least 10 percent) from the individual's weight at the beginning of the previous prior authorization period. (Cross-reference 78.28(1)"d"(20))

ITEM 2. Amend paragraph **78.28(1)"d"** by adopting the following **new** subparagraph (20):

(20) Prior authorization is required for lipase inhibitor drugs for weight loss. Requests must include documentation showing failure of other weight loss programs, a body mass index (BMI) equal to or greater than 30, one or more comorbidity conditions, and a weight management plan including diet and exercise. Prior authorization may be given for up to six months. Additional prior authorizations may be given on an individual basis after review of medical necessity and documented significant weight loss (at least 10 percent) from the individual's weight at the beginning of the previous prior authorization period. (Cross-reference 78.1(2)"a"(3))

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ARC 0684B

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 May 9, 2001. Notice of Intended Action regarding this amendment was published in the Iowa Administrative Bulletin on March 21, 2001, as **ARC 0544B**.

This amendment changes the age at which Medicaid can reimburse the local education agencies for medical services for children from under the age of 23 to under the age of 21.

The Health Care Financing Administration has notified the Department that all school-based services must be placed in the State Plan under the provision of the Early and Periodic Screening, Diagnosis and Treatment Program. The Early and Periodic Screening, Diagnosis and Treatment Program limits eligibility to age 20 and under.

Local education agencies have been made aware of this limitation on Medicaid funding. The Individuals with Dis-

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abilities Education Act may require the local education agencies to continue to provide services to children at the local education agencies' own expense until the children reach the age of 23.

This amendment does not provide for waivers in specified situations because it conforms the Medicaid program to federal requirements.

This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment shall become effective July 4, 2001.

The following amendment is adopted.

Amend rule 441—78.50(249A), introductory paragraph, as follows:

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 services providers to Medicaid-eligible individuals under the age of 23 21.

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ARC 0685B**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," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments May 9, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0580B**.

These amendments revise policy governing payments to hospitals from the Graduate Medical Education and Disproportionate Share Fund in connection with inpatient and outpatient services.

These amendments use costs from the base year cost reports used in the most recent rebasing of hospital reimbursement rates and claims from the 1999-2000 state fiscal year to allocate distributions from the fund to qualifying hospitals. In addition, the amendments establish a schedule for future updates in the year following the rebasing of hospital reimbursement rates. The amendments also delete obsolete material regarding medical education and disproportionate share payments and clarify current policy regarding these payments. Most significantly, the amendments delete obsolete references to medical education and disproportionate share as components of reimbursement rates for inpatient and outpatient services, replace the formula originally used to determine the amounts allocated to the fund with dollar amounts (to be updated annually), add paragraphs on qualifying for medical education and disproportionate share payments, and create a new subrule for supplemental indirect medical education and supplemental disproportionate share payments.

These changes do not affect the amount allocated to the Graduate Medical Education and Disproportionate Share Fund, but update the formula for the distribution of that amount among qualifying hospitals.

The Graduate Medical Education and Disproportionate Share Fund (hereinafter referred to as the fund) was created pursuant to the Laws of the Seventy-seventh General Assembly, 1997 session, chapter 208, effective July 1, 1997. Prior to July 1, 1997, graduate medical education and disproportionate share payments were made as part of payments on claims for services rendered and were based on costs and patient data from hospital cost reports filed during calendar year 1995. Pursuant to the legislative directive to create the fund, the amount in the fund and distributions from the fund were based (in part) on claims paid to qualifying fee-for-service providers attributable to medical education and disproportionate share for dates of service during the six-month period from October 1, 1996, through March 31, 1997. (Allowance was also made for managed care payments attributable to medical education and disproportionate share.)

As noted above, payments attributable to medical education and disproportionate share for this period were based on 1995 cost reports. Thus, neither the amounts allocated to the fund nor the distributions from the fund in 1997 reflected changes in medical education costs or the disproportionate share status of hospitals since 1995.

During calendar year 1999, the Department rebased the hospital reimbursement rates that no longer included a medical education or disproportionate share component, as called for in 441—paragraph 79.1(5)"k." At that time, it was recognized that payments from the fund for medical education and disproportionate share were being made to the same qualifying hospitals at the same percentage share as had been determined when the fund was initially established in 1997. It was felt that to continue this indefinitely would not appropriately take into account changes to hospitals' programs or patient mix. Therefore, the Department updated the fund.

The methodology used to calculate the revised payments to and from the fund in 1999 was essentially identical to the methodology used to establish the fund initially, but information from July 1, 1998, through June 30, 1999, was used. The amount allocated to the fund was the amount that would have been attributable to medical education and disproportionate share under the pre-1997 hospital reimbursement methodology for hospital services rendered from July 1, 1998, through June 30, 1999. Similarly, the amount distributed to each qualifying hospital was based on its percentage share of the reimbursement attributable to medical education and disproportionate share under the pre-1997 reimbursement system for services rendered from July 1, 1998, through June 30, 1999. The period of July 1, 1998, through June 30, 1999, was used because it was the most recent claims data available.

However, the Medicaid reimbursement attributable to medical education and disproportionate share under the pre-1997 reimbursement system for services rendered from July 1, 1998, through June 30, 1999, which was used in the 1999 updating, would still have been based on 1995 cost reports. Therefore, the amounts allocated to the fund and the distributions from the fund still did not reflect changes in medical education costs or the disproportionate share status of hospitals since 1995.

The new updating of the fund adopted in these amendments will reflect changes in the medical education costs and the disproportionate share status of hospitals from 1995 through the base year used in the most recent rebasing of

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hospital reimbursement rates (generally, the hospital's fiscal year ending in 1998). In addition, the provision for future updates in the year following rebasing of hospital reimbursement rates will ensure that future changes are reflected in payments from the fund as quickly as is practicable.

These amendments were developed with input from Mercy Hospital Medical Center in Des Moines, which has significantly increased the amount of medical education it provides since 1995.

These amendments do not provide for waivers in specified situations because all hospitals should be subject to the same formula for fund payments, based on the most recent information available.

The following revisions were made to the Notice of Intended Action:

The definition of "direct medical education costs" in subrule 79.1(5), paragraph "a," and subrule 79.1(16), paragraph "a," was revised to specifically state the inclusion of allied health programs in response to a comment from the Iowa Hospital Association. A revision to the definition of "base year cost report" was also added to subrule 79.1(5), paragraph "a," for consistency. Subrule 79.1(16), paragraph "v," subparagraph (3), was revised by replacing "DRG weights" with "the count of outpatient visits" to correct an error.

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

These amendments shall become effective August 1, 2001.

The following amendments are adopted.

ITEM 1. Amend subrule 79.1(5) as follows:

Amend paragraph "a," definitions of "base year cost report," "direct medical education costs," "disproportionate share payment," "final payment rate," "graduate medical education and disproportionate share fund," and "transfer," as follows:

"Base year cost report" shall mean the hospital's cost report with fiscal-year-end on or after January 1, 1998, and prior to January 1, 1999, except as noted in 79.1(5)"x." Cost reports shall be reviewed using Medicare's cost reporting regulations and cost reimbursement principles for those cost reporting periods ending on or after January 1, 1998, and prior to January 1, 1999.

"Direct medical education costs" shall mean ~~an add-on to the blended base amount which shall compensate for costs directly associated with direct the medical education of interns and residents or other medical education programs, such as a nursing education program or allied health programs, conducted in an inpatient setting, that qualify for payment as medical education costs under the Medicare program. Costs associated with~~ The amount of direct medical education costs ~~are is~~ determined from the hospital base year cost reports, and ~~are is~~ inflated and case-mix adjusted in determining the direct medical education rate. On or after July 1, 1997, ~~the payment for~~ direct medical education ~~payment~~ costs shall be ~~directly reimbursed~~ made from the graduate medical education and disproportionate share fund and shall not be added to the reimbursement for claims with discharge dates on or after July 1, 1997.

"Disproportionate share payment" shall mean ~~an add-on to the blended base amount which~~ a payment that shall compensate for treatment of a disproportionate share of poor patients. On or after July 1, 1997, the disproportionate share payment shall be ~~made directly reimbursed~~ from the graduate medical education and disproportionate share fund and shall not be added to the reimbursement for claims with discharge dates on or after July 1, 1997.

"Final payment rate" shall mean the aggregate sum of the ~~five two~~ components (the blended base amount, ~~and capital costs, direct medical education, disproportionate share and indirect medical education~~) that, when added together, form the final dollar value used to calculate each provider's reimbursement amount when multiplied by the DRG weight. These dollar values are displayed on the rate table listing. ~~On or after July 1, 1997, the direct and indirect medical education costs and the disproportionate share costs shall be directly reimbursed through the graduate medical education and disproportionate share fund and shall not be included in the final payment rate or displayed in the rate table listing.~~

"Graduate medical education and disproportionate share fund" shall mean a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the direct and indirect costs associated with the operation of graduate medical education programs and the costs associated with the treatment of a disproportionate share of poor, indigent, nonreimbursed or ~~lowly~~ nominally reimbursed patients for inpatient services.

"Transfer" shall mean the movement of a patient from a bed in a non-Medicaid-certified unit of a hospital to a bed in a ~~non-Medicaid-certified unit of~~ Medicaid-certified unit of the same hospital or to another hospital.

Further amend paragraph "a" by adopting the following new definitions in alphabetical order:

"Blended capital costs" shall mean hospital-specific capital costs, plus statewide average capital costs, divided by two.

"Children's hospitals" shall mean hospitals with inpatients predominantly under 18 years of age.

"Direct medical education rate" shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (HCFA 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by inflation factors. The result is further divided by the hospital's case-mix index, then is divided by net discharges. This formula is limited by funding availability that is legislatively appropriated.

"Disproportionate share percentage" shall mean either (1) the product of 2½ percent multiplied by the number of standard deviations by which the hospital's own Medicaid inpatient utilization rate exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals, or (2) 2½ percent. (See 79.1(5)"y"(7).)

"Disproportionate share rate" shall mean the sum of the blended base amount, blended capital costs, direct medical education rate, and indirect medical education rate multiplied by the disproportionate share percentage.

"Indirect medical education rate" shall mean a rate calculated as follows: The statewide average case-mix adjusted operating cost per Medicaid discharge, divided by two, is added to the statewide average capital costs, divided by two. The resulting sum is then multiplied by the ratio of the number of full-time equivalent interns and residents serving in a Medicare-approved hospital teaching program divided by the number of beds included in hospital departments served by the interns' and residents' program, and is further multiplied by 1.159.

"Low-income utilization rate" shall mean the ratio of gross billings for all Medicaid, bad debt, and charity care patients, including billings for Medicaid enrollees of managed care organizations and primary care case management organizations, to total billings for all patients. Gross billings do not include cash subsidies received by the hospital for inpa-

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tient hospital services except as provided from state or local governments.

"Medicaid inpatient utilization rate" shall mean the number of total Medicaid days, including days for Medicaid enrollees of managed care organizations and primary care case management organizations, both in-state and out-of-state, and Iowa state indigent patient days divided by the number of total inpatient days for both in-state and out-of-state recipients. Children's hospitals receive twice the percentage of inpatient hospital days attributable to Medicaid patients.

"Net discharges" shall mean total discharges minus transfers and short stay outliers.

Amend paragraph "b," introductory paragraph, as follows:

b. Determination of final payment rate amount. The hospital DRG final payment amount reflects the sum of inflation adjustments to the blended base amount plus ~~add-ons~~ *an add-on* for capital costs, ~~medical education costs, disproportionate share payment, and indirect medical education.~~ This blended base amount plus ~~add-ons~~ *the add-on* is multiplied by the set of Iowa-specific DRG weights to establish a rate schedule for each hospital. ~~For payments made to providers for claims with dates of discharge on or after July 1, 1997, the final payment rate shall not contain the add-on amounts for direct or indirect medical education or for disproportionate share payments.~~ Federal DRG definitions are adopted except as provided below:

Amend paragraph "d," subparagraph (2), as follows:

(2) Calculation of hospital-specific case-mix adjusted average cost per discharge. The hospital-specific case-mix adjusted average cost per discharge is calculated by subtracting from the lesser of total Iowa Medicaid costs, or covered reasonable charges as determined by the hospital's base year cost report or MMIS claims system, the actual dollar expenditures for capital costs, direct medical education costs, the payments that will be made for nonfull DRG transfers, outliers, and physical rehabilitation services if included. The remaining amount is case-mix adjusted, ~~adjusted to reflect inflation multiplied by inflation factors,~~ and divided by the total number of Iowa Medicaid discharges from the MMIS claims system ~~or cost report, whichever is greater,~~ for that hospital during the applicable base year, less the nonfull DRG transfers and short stay outliers.

Amend paragraph "e," introductory paragraph and subparagraph (1), as follows:

e. ~~Add-ons~~ *Add-on* to the base amount. ~~Four payments are~~ *One payment for capital costs* is added on to the blended base amount.

~~(1) Capital costs.~~ Capital costs are included in the rate table listing and added to the blended base amount prior to setting the final payment rate schedule. This add-on reflects a 50/50 blend of the statewide average case-mix adjusted capital cost per discharge and the case-mix adjusted hospital-specific base year capital cost per discharge attributed to Iowa Medicaid patients. Allowable capital costs are determined by multiplying the capital amount from the base year cost report by 80 percent. The 50/50 blend is calculated by adding the case-mix adjusted hospital-specific per discharge capital cost to the statewide average case-mix adjusted per discharge capital costs and dividing by two. Hospitals whose blended capital add-on exceeds one standard deviation off the mean Medicaid blended capital rate will be subject to a reduction in their capital add-on to equal the ~~greatest amount of the first standard deviation.~~

Further amend paragraph "e" by rescinding subparagraphs (2), (3), and (4).

Amend paragraph "f," subparagraphs (1) and (2), as follows:

(1) Long stay outliers. Long stay outliers are incurred when a patient's stay exceeds the upper day limit threshold. This threshold is defined as the greater of 23 days of care or two standard deviations above the average statewide length of stay for a given DRG. Reimbursement for long stay outliers is calculated at 60 percent of the average daily rate for the given DRG for each approved day of stay beyond the upper day limit. Payment for long stay outliers shall be paid at 100 percent of the calculated amount and made at the time the claim is originally ~~filed for DRG payment paid.~~

(2) Short stay outliers. Short stay outliers are incurred when a patient's length of stay is greater than two standard deviations ~~from the geometric mean~~ below the average statewide length of stay for a given DRG, rounded to the next highest whole number of days. Payment for short stay outliers will be 200 percent of the average daily rate for each day the patient qualifies up to the full DRG payment. Short stay outlier claims will be subject to PRO review and payment denied for inappropriate admissions.

Amend paragraphs "k," "m," and "o" as follows:

k. ~~Updating Inflation factors,~~ rebasing, and recalibration. ~~Updating Inflation~~ of base payment amounts by the Data Resources, Inc. hospital market basket index shall be performed annually, ~~if funds permit subject to legislative appropriations.~~ Base amounts shall be rebased and weights recalibrated every three years. ~~The graduate medical education and disproportionate share fund shall be updated as provided in subparagraphs 79.1(5) "y"(3), (6), and (9).~~

m. Payment to out-of-state hospitals. Payment made to out-of-state hospitals providing care to beneficiaries of Iowa's Medicaid program is equal to either the Iowa statewide average blended base amount plus the statewide average capital cost add-on, multiplied by the DRG weight, or blended base and capital rates calculated by using 80 percent of the hospital's submitted capital costs. For those hospitals ~~which that~~ wish to submit a cost report no less than 120 days prior to rebasing using data for Iowa Medicaid patients only, that provider will receive a case-mix adjusted blended base rate using hospital-specific, Iowa-only Medicaid data and the Iowa statewide average cost per discharge amount. Capital costs will be reimbursed at either the statewide average rate in place at the time of discharge, or the blended capital rate computed by using submitted cost report data. Hospitals that qualify for disproportionate share payment based on the definition established by their state's Medicaid agency for the calculation of the Medicaid inpatient utilization rate will be eligible to receive disproportionate share ~~add-ons if the last date of service is prior to July 1, 1997, or disproportionate share payments according to paragraph "y." if the last date of services is on or after July 1, 1997.~~ If a hospital qualifies for reimbursement for the direct medical education or indirect medical education ~~component~~ under Medicare guidelines, it shall ~~qualify for this add-on component for reimbursement purposes in Iowa if the date of service is prior to July 1, 1997, or shall be reimbursed for those components according to paragraph "y." if the date of service is on or after July 1, 1997.~~ Hospitals ~~which that~~ wish to submit the HCFA 2552 (or HCFA accepted substitute) cost report must do so within 60 days from the date of patient discharge to the state of Iowa's fiscal agent. Hospitals ~~which that~~ elect to submit cost reports for the determination of blended rates must submit new reports on an annual basis within ~~90~~ 150 days of the close of the hospital's fiscal year end. When audited, finalized reports become available from the Medicare intermedi-

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ary, these should be submitted to the Iowa Medicaid fiscal agent.

o. Hospital billing. Hospitals shall normally submit claims for DRG reimbursement to the fiscal ~~intermediary agent~~ after a patient's discharge. Payment for outlier days or costs is determined when the claim is ~~filed with~~ paid by the fiscal agent, as described in paragraph "f." When a Medicaid patient requires acute care in the same facility for a period of no less than 120 days, a request for partial payment may be made. Written requests for this interim DRG payment shall be addressed to the Administrator, Division of Medical Services, Iowa Department of Human Services, ~~Fifth Floor, Hoover State Office Building 1305 East Walnut~~, Des Moines, Iowa 50309-0114, and shall include the patient's name, state identification number, date of admission, brief summary of the case, current listing of charges, and physician's attestation that the recipient has been an inpatient for 120 days and is expected to remain in the hospital for a period of no less than 60 additional days. A departmental employee will then contact the facility to assist the facility in filing the interim claim.

Rescind and reserve paragraph "v."

Amend paragraph "w" as follows:

w. Rate adjustments for hospital mergers. When one or more hospitals merge to form a distinctly different legal entity, the base rate plus applicable add-ons will be revised to reflect this new ~~operation~~ entity. Financial information from the original cost reports and original rate calculations will be added together and averaged to form the new rate for that entity.

Rescind paragraph "y" and adopt the following new paragraph "y" in lieu thereof:

y. Graduate medical education and disproportionate share fund. Payment shall be made to all hospitals qualifying for direct medical education, indirect medical education, or disproportionate share payments directly from the graduate medical education and disproportionate share fund. The requirements to receive payments from the fund, the amounts allocated to the fund, and the methodology used to determine the distribution amounts from the fund are as follows:

(1) Qualifying for direct medical education. Hospitals qualify for direct medical education payments if direct medical education costs that qualify for payment as medical education costs under the Medicare program are contained in the hospital's base year cost report and in the most recent cost report submitted before the start of the state fiscal year for which payments are being made.

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(5)"y"(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to inpatient services for July 1, 2000, through June 30, 2001, is \$8,314,810. Adjustments may be made to this amount for inflation, subject to legislative appropriations, and for utilization increases as established in paragraph 79.1(5)"z."

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used: Multiply the total of all DRG weights for claims paid from July 1, 1999, through June 30, 2000, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct

medical education rate to obtain a dollar value. The dollar values for each hospital are summed, then each hospital's dollar value is divided by the total dollar value, resulting in a percentage. Each hospital's percentage is multiplied by the amount allocated for direct medical education to determine the payment to each hospital. Effective for payments from the fund for July 2003, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year. If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

(4) Qualifying for indirect medical education. Hospitals qualify for indirect medical education payments from the fund when they receive a direct medical education payment from Iowa Medicaid and qualify for indirect medical education payments from Medicare. Qualification for indirect medical education payments is determined without regard to the individual components of the specific hospital's teaching program, state ownership, or bed size.

(5) Allocation to fund for indirect medical education. Except as reduced pursuant to subparagraph 79.1(5)"y"(6), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for indirect medical education for July 1, 2000, through June 30, 2001, is \$14,599,413. Adjustments may be made to this amount for inflation, subject to legislative appropriations, and for utilization increases as established in paragraph 79.1(5)"z."

(6) Distribution to qualifying hospitals for indirect medical education. Distribution of the amount in the fund for indirect medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for indirect medical education, the following formula is used: Multiply the total of all DRG weights for claims paid from July 1, 1999, through June 30, 2000, for each hospital reporting direct medical education costs that qualify for payment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's indirect medical education rate to obtain a dollar value. The dollar values for each hospital are summed, then each hospital's dollar value is divided by the total dollar value, resulting in a percentage. Each hospital's percentage is multiplied by the amount allocated for indirect medical education to determine the payment to each hospital. Effective for payments from the fund for July 2003, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year. If a hospital fails to qualify for indirect medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

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(7) Qualifying for disproportionate share. Hospitals qualify for disproportionate share payments from the fund when the hospital's low-income utilization rate exceeds 25 percent or when the hospital's Medicaid inpatient utilization rate exceeds one standard deviation from the statewide average Medicaid utilization rate. For those hospitals that qualify for disproportionate share under both the low-income utilization rate definition and the Medicaid inpatient utilization rate definition, the disproportionate share percentage shall be the greater of (1) the product of 2½ percent multiplied by the number of standard deviations by which the hospital's own Medicaid inpatient utilization rate exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals, or (2) 2½ percent. For those hospitals that qualify for disproportionate share under the low-income utilization rate definition, but do not qualify under the Medicaid inpatient utilization rate definition, the disproportionate share percentage shall be 2½ percent. For those hospitals that qualify for disproportionate share under the Medicaid inpatient utilization rate definition, but do not qualify under the low-income utilization rate definition, the disproportionate share percentage shall be the product of 2½ percent multiplied by the number of standard deviations by which the hospital's own Medicaid inpatient utilization rate exceeds the statewide mean Medicaid inpatient utilization rate for all hospitals. Information contained in the hospital's available 1998 submitted Medicare cost report is used to determine the hospital's low-income utilization rate and the hospital's inpatient Medicaid utilization rate.

Additionally, a qualifying hospital must also have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to Medicaid-eligible persons who are in need of obstetric services. In the case of a hospital located in a rural area as defined in Section 1886 of the Social Security Act, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

Out-of-state hospitals serving Iowa Medicaid patients qualify for disproportionate share payments from the fund based on their state Medicaid agency's calculation of the Medicaid inpatient utilization rate. The disproportionate share percentage is calculated using the number of standard deviations by which the hospital's own state Medicaid inpatient utilization rate exceeds the hospital's own statewide mean Medicaid inpatient utilization rate.

Hospitals qualify for disproportionate share payments from the fund without regard to the facility's status as a teaching facility or bed size.

(8) Allocation to fund for disproportionate share. The total amount of funding that is allocated to the graduate medical education and disproportionate share fund for disproportionate share payments for July 1, 2000, through June 30, 2001, is \$6,978,925. Adjustments may be made to this amount for inflation, subject to legislative appropriations, and for utilization increases as established in paragraph 79.1(5)"z."

(9) Distribution to qualifying hospitals for disproportionate share. Distribution of the amount in the fund for disproportionate share shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for disproportionate share, the following formula is used: Multiply the total of all DRG weights for claims paid July 1, 1999, through June 30, 2000, for each qualifying hospital by each hospital's disproportionate share rate to obtain a dollar value. The dollar values for each hospital are summed, then each hospital's dollar value is divided by the total dollar val-

ue, resulting in a percentage. Each hospital's percentage is multiplied by the amount allocated for disproportionate share to determine the payment to each hospital. Effective for payments from the fund for July 2003, the state fiscal year used as the source of DRG weights shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of DRG weights shall be updated by a three-year period effective for payments from the fund for July of every third year. In compliance with Medicaid Voluntary Contribution and Provider Specific Tax Amendments (Public Law 102-234) and 1992 Iowa Acts, chapter 1246, section 13, the total of disproportionate share payments from the fund and supplemental disproportionate share payments pursuant to paragraph 79.1(5)"ab" cannot exceed the amount of the federal cap under Public Law 102-234.

Adopt the following **new** paragraph "ab":

ab. Supplemental indirect medical education and supplemental disproportionate share. In addition to payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)"y," payment shall be made to all hospitals qualifying for supplemental indirect medical education and supplemental disproportionate share payments. The requirements to receive supplemental payments, the amounts available, and the methodology used for determining payments are as follows:

(1) Qualifying for supplemental indirect medical education. Hospitals qualify for supplemental indirect medical education payments by receiving a direct medical education payment from Iowa Medicaid, qualifying for an indirect medical education payment from Medicare, being an Iowa state-owned hospital with more than 500 beds, and having eight or more separate and distinct residency specialty or subspecialty programs recognized by the American College of Graduate Medical Education.

(2) Available amount for supplemental indirect medical education. The total amount of funding that is available for supplemental indirect medical education for July 1, 2000, through June 30, 2001, is \$24,834,207. Adjustments made to this amount are determined pursuant to the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248).

(3) Payments to qualifying hospitals for supplemental indirect medical education. Subject to the amount available, the amount to be distributed to each qualifying hospital for supplemental indirect medical education is determined by the following formula: The statewide average case-mix adjusted operating cost per Medicaid discharge is multiplied by five and divided by two, then added to the statewide average capital costs multiplied by five and divided by two. The resulting sum is then multiplied by the ratio of the number of full-time equivalent interns and residents serving in a Medicare-approved hospital teaching program divided by the number of beds included in hospital departments served by the interns' and residents' program, and is further multiplied by 1.159. The number of interns, residents and beds is based on information contained in the hospital's base period Medicare cost report which will be updated when rebasing and recalibration are performed. Payments for supplemental indirect medical education shall be on a monthly basis.

(4) Qualifying for supplemental disproportionate share. In-state hospitals that are state-owned acute-care hospitals, that have more than 500 beds, and that qualify for payments from the graduate medical education and disproportionate share fund for disproportionate share pursuant to paragraph 79.1(5)"y" also qualify for supplemental disproportionate share payments.

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(5) Available amount for supplemental disproportionate share. In compliance with Medicaid Voluntary Contribution and Provider Specific Tax Amendments (Public Law 102-234) and 1992 Iowa Acts, chapter 1246, section 13, the total of disproportionate share payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)"y" and supplemental disproportionate share payments cannot exceed the amount of the federal cap under Public Law 102-234. The amount available for supplemental disproportionate share payments shall be the lesser of (1) the applicable state appropriation or (2) the federal cap minus disproportionate share payments from the graduate medical education and disproportionate share fund pursuant to paragraph 79.1(5)"y."

(6) Payments to qualifying hospitals for supplemental disproportionate share. Payments for supplemental disproportionate share are made after the end of each federal fiscal year. Subject to the amount available, qualifying hospitals receive a payment of up to 166 percent of the hospital's total calculated reimbursement for all cases paid by the Medicaid fiscal agent within the previous federal fiscal year.

ITEM 2. Amend subrule 79.1(16) as follows:

Amend paragraph "a," definitions of "base year cost report" and "direct medical education costs," as follows:

"Base year cost report" shall mean the hospital's cost report with fiscal-year-end on or after January 1, 1998, and prior to January 1, 1999, except as noted in paragraph "s." Cost reports shall be reviewed using Medicare's cost reporting and cost reimbursement principles regulations for those cost reporting periods.

"Direct medical education costs" shall mean a per visit add-on to the APG payment amount which shall compensate for costs directly associated with outpatient direct the medical education of interns and residents or other medical education programs, such as a nursing education program or allied health programs, conducted in an outpatient setting, that qualify for payment as medical education costs under the Medicare program. ~~Costs associated with~~ The amount of direct medical education costs ~~are~~ is determined from the hospital base year cost reports and ~~are~~ is inflated in determining the direct medical education rate.

Further amend paragraph "a" by adopting the following new definitions in alphabetical order:

"Direct medical education rate" shall mean a rate calculated for a hospital reporting medical education costs on the Medicare cost report (HCFA 2552). The rate is calculated using the following formula: Direct medical education costs are multiplied by the percentage of valid claims to total claims, further multiplied by inflation factors, then divided by outpatient visits. This formula is limited by funding availability that is legislatively appropriated.

"Invalid claims or visits" shall mean claims or visits that are not priced and paid using the ambulatory patient group (APG) system.

"Net number of Iowa Medicaid valid visits" shall mean total visits plus the incremental portion of visits that resulted in outliers less invalid visits.

"Valid claims or visits" shall mean those claims or visits that are priced and paid using the ambulatory patient group (APG) system.

Amend paragraph "e," subparagraph (2), as follows:

(2) Calculation of hospital-specific case-mix adjusted average cost per visit. The hospital-specific case-mix adjusted average cost per visit is calculated by subtracting from the lesser of total Iowa Medicaid costs, or covered reasonable charges as determined by the hospital's base year cost report

~~or MMIS claims system,~~ the actual dollar expenditures for direct medical education costs for interns and residents, *observation bed costs*, and, using valid claims, calculation of actual payments that will be made for outliers, fee scheduled laboratory services and services known as noninpatient programs as set forth at 441—subrule 78.31(1), paragraphs "g" to "n." The remaining amount is case-mix adjusted, adjusted to reflect inflation and divided by the total *net* number of Iowa Medicaid *valid* visits from the MMIS claims system ~~or cost report, whichever is greater,~~ for that hospital during the applicable base year.

Rescind and reserve paragraph "f."

Amend paragraphs "i," "j," and "k" as follows:

i. Services covered by APG payments. Medicaid adopts the Medicare definition of outpatient hospital services at 42 CFR 414.32, as amended to September 15, 1992, which will be covered by the APG-based prospective payment system, except as indicated herein. As a result, combined billing for physician services is eliminated unless the hospital has approval from the Health Care Financing Administration (HCFA) to combine bills. Teaching hospitals having HCFA's approval to receive reasonable cost reimbursement for physician services under 42 CFR 415.58, as amended to November 25, 1991, are eligible for combined billing status if they have filed the approval notice with the ~~department's Medicaid~~ fiscal agent. Reasonable cost settlement for teaching physicians for those costs not included in the APG cost-finding process will be made during the year-end settlement process. Services provided by certified nurse anesthetists (CRNAs) employed by a physician are covered by physician reimbursement. Payment for the services of CRNAs employed by the hospital are included in the hospital's reimbursement.

Ambulance transportation will not be reimbursed by APG payment. A hospital-based ambulance service must be an enrolled Medicaid ambulance provider and follow policy as specified at rule 441—78.11(249A) unless the recipient's condition results in an inpatient admission to the hospital. In the case of an inpatient admission, the reimbursement for ambulance services is included in the hospital's DRG reimbursement rate. Enrollment information and claim submission for ambulance services should be directed to the Medicaid fiscal agent.

Claims for all noninpatient services (NIP), including outpatient mental health, substance abuse, eating disorders, cardiac rehabilitation, pulmonary rehabilitation, diabetic education, pain management, and nutritional counseling, should be billed to Iowa Medicaid and will be paid under the respective NIP program on a fixed fee schedule.

Upon implementation of the managed mental health care and substance abuse program (MHAP) (Iowa Plan), all psychiatric services for recipients with a primary diagnosis of mental illness, except for reference lab services and radiology services, in those eligibility groups targeted under the MHAP Iowa Plan program will be the responsibility of the MHAP Iowa Plan contractor and will not be otherwise payable by Iowa Medicaid. Emergency psychiatric evaluations for recipients who are covered by the MHAP Iowa Plan program will be the responsibility of the contractor. For those recipients who are not covered by the MHAP Iowa Plan program, services will be payable under either the APG for emergency psychiatric evaluation or under the respective NIP program. Additionally, laboratory services to monitor Clozaril are payable under the APG system only if the recipient is not MHAP eligible under the Iowa Plan program. ~~Eligibility groups served under the managed substance abuse~~

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~~care plan (MSACP) program.~~ *Substance abuse services for persons eligible under managed care* will be the responsibility of the ~~MSACP Iowa Plan~~ contractor and not payable through the APG system. The only exceptions to this policy are reference laboratory and radiology services, which will be payable by fee schedule or APG.

Claims for the following APGs, as defined in Version 2 of the Grouper software, will not be accepted by Iowa Medicaid for payment: APG 005—Nail Procedures, APG 171—Artificial Fertilization, APG 212—Fitting of Contact Lenses, APG 386—Biofeedback and hypnotherapy, and APG 382—Provision of vision aids.

Claims grouping into APG 702 (Well Child Exam) shall meet all early and periodic screening, diagnosis and treatment requirements as set forth at rule 441—84.3(249A).

j. System implementation, *inflation factors*, rebasing, and recalibration. For state fiscal years 1995 and 1996, a risk corridor has been established to ensure that APG payments to each hospital will not be less than 95 percent or greater than 105 percent of Medicaid allowable costs. For the state fiscal year 1997, a risk corridor has been established to ensure that hospital payments will not be less than 90 percent or greater than 110 percent of Medicaid allowable costs.

Periodic interim payments, made quarterly to ensure adequate cash flow to hospitals during the transition, will begin 30 days after the quarter ending March 31, 1995. No periodic interim payment will be made to any hospital within the corridor limits. Money may also be requested to be refunded if an overpayment exists.

Inflation of base payment amounts by the Data Resources, Inc. hospital market basket index shall be performed annually, subject to legislative appropriations. The APG system will Base amounts shall be rebased and APG weights recalibrated every three years beginning October 1, 1996. Cost reports used will be hospital fiscal year-end reports within the calendar year ending no later than December 31, 1998. Case-mix indices shall be calculated using valid claims most nearly matching each hospital's fiscal year end. *The graduate medical education and disproportionate share fund shall be updated as provided in subparagraph 79.1(16)“v”(3).*

k. Payment to out-of-state hospitals. Payment made to out-of-state hospitals providing care to beneficiaries of Iowa's Medicaid program is equal to either the Iowa statewide average case-mix adjusted base amount or the Iowa statewide average case-mix adjusted base amount blended with the hospital-specific base amount. Hospitals that submit a cost report with data for Iowa Medicaid patients only, no less than 120 days prior to rebasing, will receive a case-mix adjusted blended base rate using hospital-specific Iowa-only Medicaid data and the Iowa statewide average cost per visit amount. If a hospital qualifies for reimbursement for ~~the direct medical education component~~ under Medicare guidelines, it shall qualify for ~~this add-on component~~ for reimbursement purposes in Iowa. Hospitals wishing to submit the HCFA 2552 (or HCFA accepted substitute) cost report must do so within 60 days from the date of patient visit to the ~~state of Iowa's Medicaid~~ fiscal agent. Hospitals ~~which that~~ elect to submit cost reports for the determination of blended rates shall submit new reports to the department's fiscal agent on an annual basis within ~~90~~ 150 days of the close of the hospital's fiscal year end. When audited, finalized reports become available from the Medicare intermediary, the facility may submit them to the Iowa Medicaid fiscal agent.

Amend paragraph “m,” introductory paragraph, as follows:

m. Hospital billing. Hospitals shall normally submit a UB-92 claim, with all services occurring within a 72-hour period, for APG reimbursement to the fiscal ~~intermediary agent~~ after a patient's outpatient “visit” is complete. Payment for outlier costs is determined when the claim is ~~filed with paid~~ by the fiscal agent, as described in paragraph “g.” However, the following exceptions are allowed:

Amend paragraphs “p” and “q” as follows:

p. Cost report adjustments. Hospitals with 1998 cost reports adjusted by Medicare through the cost settlement process for cost reports applicable to the APG base year may appeal to the department the hospital-specific base ~~and add-on costs~~ cost used in calculating the Medicaid APG rates if the Medicare adjustment results in a material change to the rate. Any appeal of the APG rate due to Medicare's adjustment process must be made in writing to the department within 30 days of Medicare's finalization and notification to the provider. If the provider does not notify the department of the adjusted amounts within the 30-day period, no costs shall be reconsidered for adjustment by Iowa Medicaid. Claims adjustment reflecting the changed rates shall only be made to claims that have been processed within one year prior to the notification from the provider or the beginning of the rebasing period, whichever is less.

q. Determination of payment amounts for mental health noninpatient (NIP) services. Mental health NIP services are limited as set forth at 441—78.31(4)“d”(7) and are reimbursed on a fee schedule basis. ~~Upon implementation of a managed mental health care program, mental~~ *Mental* NIP services ~~will become~~ *are* the responsibility of the managed mental health *care and substance abuse (Iowa Plan)* contractor for persons eligible for managed mental health care.

Rescind paragraph “v” and adopt the following ~~new~~ paragraph “v” in lieu thereof:

v. Graduate medical education and disproportionate share fund. Payment shall be made to all hospitals qualifying for direct medical education directly from the graduate medical education and disproportionate share fund. The requirements to receive payments from the fund, the amount allocated to the fund and the methodology used to determine the distribution amounts from the fund are as follows:

(1) Qualifying for direct medical education. Hospitals qualify for direct medical education payments if direct medical education costs that qualify for payment as medical education costs under the Medicare program are contained in the hospital's base year cost report and in the most recent cost report submitted before the start of the state fiscal year for which payments are being made.

(2) Allocation to fund for direct medical education. Except as reduced pursuant to subparagraph 79.1(16)“v”(3), the total amount of funding that is allocated to the graduate medical education and disproportionate share fund for direct medical education related to outpatient services for July 1, 2000, through June 30, 2001, is \$2,811,778. Adjustments may be made to this amount for inflation, subject to legislative appropriations, and for utilization increases as established in paragraph 79.1(16)“w.”

(3) Distribution to qualifying hospitals for direct medical education. Distribution of the amount in the fund for direct medical education shall be on a monthly basis. To determine the amount to be distributed to each qualifying hospital for direct medical education, the following formula is used: Multiply the total count of outpatient visits for claims paid from July 1, 1999, through June 30, 2000, for each hospital reporting direct medical education costs that qualify for pay-

HUMAN SERVICES DEPARTMENT[441](cont'd)

ment as medical education costs under the Medicare program in the hospital's base year cost report by each hospital's direct medical education rate to obtain a dollar value. The dollar values for each hospital are summed, then each hospital's dollar value is divided by the total dollar value, resulting in a percentage. Each hospital's percentage is multiplied by the amount allocated for direct medical education to determine the payment to each hospital. Effective for payments from the fund for July 2003, the state fiscal year used as the source of the count of outpatient visits shall be updated to July 1, 2002, through June 30, 2003. Thereafter, the state fiscal year used as the source of the count of outpatient visits shall be updated by a three-year period effective for payments from the fund for July of every third year. If a hospital fails to qualify for direct medical education payments from the fund because it does not report direct medical education costs that qualify for payment as medical education costs under the Medicare program in the most recent cost report submitted before the start of the state fiscal year for which payments are being made, the amount of money that would have been paid to that hospital shall be removed from the fund.

[Filed 5/9/01, effective 8/1/01]
[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0686B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 234.6, 237.3, 237A.12, 238.16, and 600.22, the Department of Human Services hereby amends Chapter 107, "Certification of Adoption Investigators," Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 109, "Child Care Centers," Chapter 110, "Family and Group Child Care Homes," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 157, "Purchase of Adoption Services," Chapter 170, "Child Care Services," and Chapter 200, "Adoption Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments May 9, 2001. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on March 21, 2001, as ARC 0548B.

These amendments revise the procedures for reviewing founded child abuse reports and criminal convictions in reference to the following parties:

- Persons requesting to be certified as adoption investigators.
• Persons wanting to be licensed as foster family homes or to be approved as adoptive parents by the Department or by a child-placing agency.
• Agencies or individuals wanting to be licensed as child care centers.
• Persons wanting to be registered to provide family or group child care.
• Nonregistered family child care homes wanting to receive public funds for providing child care for clients of the Department.

Currently, Central Office is required to review all founded child abuse reports, aggravated misdemeanors and felony convictions, and all simple or serious misdemeanors less than five years old to determine if the abuse or crime warrants prohibition of approval of registration or license. This process may add up to 30 days to the evaluation process.

These changes allow the regional administrator or designee to make the final evaluation decisions for a person wanting to be licensed as a foster family home by the Department or a child-placing agency, an agency or individual wanting to be licensed as a child care center or registered as a family or group child care home, nonregistered family child care homes wanting to receive public funds for providing child care for clients of the Department, and persons wanting to be approved as adoptive parents for whom the Department conducts the home study.

The process continues to require Central Office to make the final evaluation decisions for persons wanting to be certified as adoption investigators and for persons wanting to be approved as adoptive parents for whom a child-placing agency conducts the home study.

Allowing final decisions to be made at the regional level will decrease the length of time an individual or agency must wait before receiving approval or denial of the certification or licensure process.

These amendments also require that sex offender registry checks be made on these persons and agencies, and correct form names and legal references.

These amendments do not provide for waivers in specified situations because these changes confer a benefit on persons wanting to be certified or licensed by decreasing the length of time and the number of steps required for completing and approving or denying a record check evaluation. It is not appropriate to provide a waiver for checking the sex offender registry.

The following revision was made to the Notice of Intended Action:

Subrule 107.4(5) was revised to remove incorrect references to the department of inspections and appeals.

These amendments are intended to implement Iowa Code section 234.6(6) and Iowa Code chapters 237, 237A, 238, and 600.

These amendments shall become effective August 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 108 to 110, 113, 157, 170, and 200] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as ARC 0548B, IAB 3/21/01.

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[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0699B**INFORMATION TECHNOLOGY
DEPARTMENT[471]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 14B.105, the Information Technology Council hereby adopts Chapter 15, "Information Technology Development Strategies and Activities," Iowa Administrative Code.

These rules define the way in which information technology strategies may be developed to ensure that the Department meets the technology needs of the state. These rules also describe the types of arrangements the Department may enter into to maximize or supplement existing resources and to generate revenue. These rules also lay the foundation for the technology advisory councils to adopt procedures relating to Web-based sponsorship and other activity. Furthermore, the rules state that revenue generated by Web-based advertising or promotional activity be deposited in the IowAccess revolving fund.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0591B**. A public hearing was held on April 24, 2001.

The Information Technology Council adopted these rules on May 10, 2001.

Since publication of the Notice, subrules 15.3(1) and 15.3(3) were revised and rule 471—15.4(14B) was added to address agency and other government entity participation in Web-sponsorship programs as well as the receipt and administration of the funds received as a result of these programs. These revisions are intended to respond to concerns addressed by and comments received by the Department.

These rules are intended to implement Iowa Code section 14B.105.

These rules will become effective July 4, 2001.

The following **new** chapter is adopted.

CHAPTER 15**INFORMATION TECHNOLOGY DEVELOPMENT
STRATEGIES AND ACTIVITIES**

471—15.1(14B) Development strategies and activities. The department shall establish and implement strategies that will foster the development and application of information technology, electronic commerce, electronic government and Internet applications across participating agencies and in cooperation with other governmental entities and the private sector. Such strategies shall include, but not be limited to, developing public and private relationships to supplement existing resources and comprehensively meet the information technology needs of the state.

471—15.2(14B) Partnerships with public or private entities. The department may enter into partnerships, relationships, agreements, or other arrangements with public or private entities in order to obtain assistance, supplement existing resources and generate revenue in support of information technology development strategies and activities. Such partnerships, relationships, agreements, or other arrangements may involve, without limitation, the following:

15.2(1) The evaluation and development of information technology.

15.2(2) The establishment of pilot projects to develop prototype applications.

15.2(3) The joint sharing of information technology.

15.2(4) The provision or sale of sponsorships or other promotional activities on IowAccess or state Web sites.

15.2(5) The purchase, lease, licensing, disposal, or other procurement or disposition of information technology.

15.2(6) The obtainment of legal protection necessary to secure or enforce a right to or an interest in data processing software, consistent with Iowa Code section 22.3A.

15.2(7) The sale or distribution, marketing or licensing of data processing software, consistent with Iowa Code section 22.3A.

471—15.3(14B) Web-based sponsorships and promotional activities.

15.3(1) Agreements. The department may enter into agreements with public or private entities to provide for sponsorships or other promotional activities on eligible state Web sites in order to generate revenue or other advantages for the state. These agreements are limited in scope to solely those relationships by which an entity sponsors a Web site and are not intended to extend to public-private marketing partnerships which may be legally entered into outside the scope of this rule.

15.3(2) Policies and procedures. Prior to placing any sponsorships on state Web sites, the department and the information technology council shall consult with the IowAccess advisory council to develop and publish written policies and procedures that will apply to all sponsorships and other promotional content appearing on state Web sites.

15.3(3) Deposit and use of revenues. All revenues received as a result of any Web-based sponsorship or promotional activity shall be deposited in the IowAccess revolving fund to be administered by the department. All funds received from each individual department or entity sponsorship activity shall be earmarked for that particular department and then shall be dedicated for that particular department's technology needs consistent with Iowa Code section 14B.206.

15.3(4) No endorsement by the state. The appearance on a state Web site of any sponsorship or other promotion with respect to a product or service produced, provided or offered by a person or entity unaffiliated with the state shall not be construed as the state's endorsement, acceptance or approval of, or a representation or warranty with respect to (a) such product or service, or (b) the content, accuracy or method of sponsoring or promoting such product or service.

471—15.4(14B) Scope of applicability.

15.4(1) Nothing in this rule shall be interpreted to violate Iowa Code sections 99E.10 and 99E.20.

15.4(2) Agencies choosing to participate in any Web-based sponsorship activity shall be able to participate in the decisions surrounding their participation.

15.4(3) Entities which do not fall under the authority of Iowa Code chapter 14B may agree to partner with the department to participate in Web-based sponsorship activities. Moneys received as a result of these agreements shall be administered in the same manner as those administered under 15.3(3).

These rules are intended to implement Iowa Code chapter 14B.

[Filed 5/11/01, effective 7/4/01]

[Published 5/30/01]

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ARC 0696B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135G.7, the Department of Inspections and Appeals hereby adopts amendments to Chapter 52, "Birth Centers," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 7, 2001, as **ARC 0473B**.

The adopted amendments remove unnecessary regulation related to birth center governing bodies, health records maintained by birth centers and staff requirements. Item 1 removes regulation pertaining to the director of the birth center and the director of medical affairs. Item 2 removes regulation pertaining to annual medical evaluations for staff and amends the rule to require medical evaluations at the commencement of employment and at least every four years thereafter. Item 3 adds HIV status to the list of complications that shall require the midwife to call and confer with the client's consulting physician to determine if the pregnancy continues to be low risk. Item 4 removes requirements related to family rooms maintained by birth centers. Item 5 removes employment agreements from the list of required personnel policies to be maintained by a birth center. Item 6 removes language requiring a consulting physician to review and sign a client's health record after delivery. Item 7 extends the individuals to be informed of the policies and procedures of the birth center beyond client and family to other individuals if identified by the client. Item 8 corrects the erroneous use of the word "and" by replacing it with the word "or" in the listing of symptoms associated with gastrointestinal distress.

One change from the Notice of Intended Action has been made. Paragraph 52.8(1)"a," which contains requirements relating to family rooms maintained by birth centers, is being rescinded in response to written comment received from the Iowa Nurses Association.

These amendments will become effective July 4, 2001.

These amendments do not provide for waivers because the amendments remove regulations and requirements to the licensees' benefit.

These amendments are intended to implement Iowa Code chapter 135G.

The following amendments are adopted.

ITEM 1. Amend rule 481—52.3(135G) as follows:

481—52.3(135G) Direction. Each birth center, whether organized as a proprietary or voluntary service under sole ownership or corporate group, shall have a governing body with full authority and responsibility for overall policy and fiscal management of the facility and services. The governing body shall:

1. Develop and make available to the department a table of organization ~~which shows the position of each staff member.~~

2. Be responsible for the appointment of the director of the birth center ~~and a director of medical affairs.~~

~~The director of the birth center shall have administrative ability and shall be responsible for the operation and maintenance of the facility. If the director is not a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy, or a licensed nurse mid-~~

~~wife, a licensed nurse midwife shall be appointed director of midwifery services.~~

~~The director of medical affairs shall be a licensed physician in good standing with hospital obstetrical privileges and shall advise and consult with the birth center staff and approve policies, procedures and protocols related to midwifery management of care and medical management of pregnancy. These shall relate to birth, postpartum, newborn and gynecologic health care. The director of medical affairs shall periodically review previously developed policies, procedures and protocols and ascertain the need for amendment, if any.~~

3. Adopt bylaws which include criteria for staff and consultation appointments, delineation of clinical privileges and organization of staff.

ITEM 2. Amend subrule 52.4(4) as follows:

~~52.4(4) All staff shall have an annual medical evaluation by a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy certifying that the staff member is physically and emotionally capable of performing assigned tasks. Health examinations for all personnel shall be required at the commencement of employment and at least every four years thereafter. The examination shall include, at a minimum, the health and tuberculosis status of the employee.~~

ITEM 3. Adopt new paragraph 52.5(1)"n" as follows:

n. HIV status.

ITEM 4. Rescind paragraph 52.8(1)"a" as follows:

~~a. The family room shall include a play area for children and a living room setting of tables and chairs. It shall include some sleeping accommodation for use by family members.~~

ITEM 5. Amend subrule 52.9(2) as follows:

~~52.9(2) Personnel policies. Personnel policies shall include job descriptions for all personnel, employment agreements, description of required orientation, training and educational preparation. These policies shall be available on site.~~

ITEM 6. Rescind paragraph 52.9(4)"h" as follows:

~~h. Be reviewed and signed by the consulting physician after delivery.~~

ITEM 7. Amend rule 481—52.10(135G), introductory paragraph and numbered paragraphs "1" to "7," as follows: **481—52.10(135G) Services.** Each client, ~~and family or those otherwise identified by the client~~ shall be fully informed of the policies and procedures of the licensed birth center, including, but not limited to:

1. The selection of clients,
2. The expectation for prenatal care and self-help involving the client and family,
3. The qualifications of the clinical staff,
4. Conditions which may result in a transfer to physician management or a hospital,
5. The philosophy of childbirth care practiced by the staff,
6. Services available, and
7. The customary length of stay after delivery.

ITEM 8. Amend subparagraph 52.10(4)"b"(10) as follows:

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

(10) Gastrointestinal distress as exemplified by bilious vomiting, continuous vomiting, abdominal distention, and or bloody diarrhea,

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ARC 0695B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby adopts new Chapter 66, "Quality-Based Inspection," Iowa Administrative Code.

The adopted chapter implements changes made to Iowa Code section 135C.16(1) and 2000 Iowa Acts, chapter 1180, which established a quality-based inspection system for health care facilities which are licensed only by the state pursuant to Iowa Code chapter 135C. These rules establish the program's participation guidelines and criteria affecting a participating facility's survey cycle.

These amendments were published under Notice of Intended Action in the December 13, 2000, Iowa Administrative Bulletin as **ARC 0345B**.

A public hearing was held via the ICN on January 4, 2001. The hearing utilized 12 ICN sites. Approximately 30 individuals attended with unanimous support for the new chapter.

Changes from the Notice of Intended Action have been made. In response to public comment, the definition of "quality-based inspection" has been amended. The definition no longer specifies the time period, by date, in which initial inspections will be conducted. Concern was expressed that, by specifying a time frame for initial inspections, participation would be restricted. In addition, specific survey cycles are now included under rule 481—66.5(135C). Surveys of a facility will be conducted between 6 months and 30 months dependent upon the criteria contained in subrule 66.5(1).

A waiver provision has not been included in this new chapter. A waiver provision is not applicable to quality-based inspections because a facility's participation is voluntary.

These rules will become effective on July 4, 2001.

These rules are intended to implement Iowa Code section 135C.16(1) and 2000 Iowa Acts, chapter 1180.

The following **new** chapter is adopted.

CHAPTER 66 QUALITY-BASED INSPECTION

481—66.1(135C) Definitions.

"Department" means the department of inspections and appeals.

"Division" means the division of health facilities.

"Health care facility" or "facility" means a nursing facility, a residential care facility, a residential care facility for persons with mental illness, or a residential care facility for persons with mental retardation.

"Provider" means a health care facility licensed by the department of inspections and appeals under Iowa Code chapter 135C.

"Quality-based inspection" means a nonstandard inspection to be conducted by the department. This quality-based inspection is not a substitute for the standard survey and will not be combined with a standard survey, complaint investigation or dependent adult abuse investigation. The quality-based inspection constitutes a review of the facility's efficiency and effectiveness and involves a review of identified performance criteria.

"Quality-based self-assessment form" means the form used by participating facilities to complete a quality-based self-assessment.

"Quality review report" means the findings of the department of inspections and appeals following a validation review.

"Standard survey" means an unannounced inspection performed every 30 months.

"Statement of deficiency" means a written statement of any administrative rule violations found during a survey.

"Validation review" means the department's on-site review to assess the accuracy of a provider's quality-based self-assessment.

481—66.2(135C) Participation. Participation in a quality-based inspection is limited to health care facilities which are licensed only by the state and are selected for participation by the department. The department shall select a facility based upon the facility's history of compliance, the facility's willingness to participate in such an inspection, and information collected during the two previous survey cycles. Participating facilities shall then receive a quality-based inspection in their first inspection to be performed during the time period of July 1, 2000, through September 1, 2001. Participation in a quality-based inspection does not relieve a facility of its obligation to operate in compliance with state law and rules.

481—66.3(135C) Self-assessment. The department will supply participating facilities with quality-based self-assessment forms. Participating facilities must annually complete a self-assessment based on quality management criteria and return the completed self-assessment to the department electronically or via the postal service within 30 calendar days after initial receipt. A participating facility that fails to submit a scheduled self-assessment shall be subject to a standard survey.

481—66.4(135C) Validation review. Within 30 calendar days of receiving the facility's self-assessment, the department will conduct a scheduled validation review. During the validation review, the department will apply the same quality management criteria used by the facility in the self-assessment. The validation review will include an assessment of those requirements fundamental to health, safety, welfare and rights of the persons served by the facility.

66.4(1) Following a participating facility's validation review, the department will submit to the facility a quality review report. The quality review report will examine findings in relation to the quality management criteria.

66.4(2) Following the receipt of the quality review report, each participating facility must submit an improvement plan within 30 calendar days.

66.4(3) A participating facility that fails to submit an improvement plan within 30 calendar days shall be subject to a standard survey.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—66.5 (135C) Program survey cycle. Participating facilities shall be subject to a standard survey not later than 30 months after the date of the previous standard survey. Specific survey cycles shall include: 6 to 12 months, 12 to 18 months, 18 to 24 months, and 24 to 30 months.

66.5(1) The department shall develop a process for identifying the survey cycle for participating facilities licensed only by the state based upon the following:

- a. Compliance history of the facility.
- b. Facility's completed quality-based self-assessment.
- c. Information collected during the facility's previous two survey cycles.
- d. Deficiencies issued as a result of a survey or complaint investigation.
- e. Information obtained from facility residents and family members.
- f. Information obtained from facility employees.
- g. Information obtained from the state ombudsman.

66.5(2) The department shall provide public notice of the classification process and shall identify the selected survey cycles for each participating facility.

66.5(3) The department shall alter the survey cycle for a participating facility based on findings identified through the completion of:

- a. A survey.
- b. A validation review.
- c. A complaint investigation.

481—66.6(135C) Initiation of standard survey. The initiation of a standard survey out of a validation review must receive the consensus of the department's applicable program coordinator, bureau chief and division administrator. Upon administrative approval, the department shall conduct a standard survey as an extension of a validation review if a violation of health, safety, welfare, or rights of the residents is alleged.

481—66.7(135C) Statement of deficiencies. Within 10 calendar days of completing the standard survey, the department will mail a statement of deficiencies to the provider. Within 20 calendar days of receiving the statement of deficiencies, the provider must mail a plan of correction to the department. The plan of correction shall state how the provider will correct the deficient practices observed during the survey and address any system changes necessary to avoid future occurrence of the deficient practices.

481—66.8(135C) Training. The department, through quality-based inspection, shall expand training and educational efforts for the participating facilities, residents and family members, long-term care ombudsman, and the general public.

481—66.9(135C) Evaluation. The department shall develop a process for the evaluation of the effectiveness of the quality-based inspection program. The evaluation will be conducted annually and will be made available to the governor, the general assembly and the general public. Whenever possible, the information should be available via electronic means.

These rules are intended to implement Iowa Code section 135C.16(1) and 2000 Iowa Acts, chapter 1180.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0710B

**MEDICAL EXAMINERS
BOARD[653]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby adopts new Chapter 8, "Fees," Iowa Administrative Code.

New Chapter 8 specifies the fees the Board charges for testing, applications for licensure of physicians and acupuncturists, verification and certification, public records, mailing lists and licensee data, returned checks, and copies of the laws and rules; specifies the conditions for refunds; and states that licensure and examination fees are not subject to waiver or variance.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0588B**. A public hearing was held on April 25, 2001.

The only change from the Notice is the addition of a fee for duplicate wall certificates or renewal cards. The \$25 fee for these duplicates exists in the Board's current rules.

The Board adopted Chapter 8 during a telephone conference call on May 11, 2001.

These rules are intended to implement Iowa Code sections 147.11, 147.80, 147.103A, 148.5, 148.10, and 148.11.

These rules will become effective July 4, 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 rules [Ch 8] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0588B**, IAB 4/4/01.

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[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0708B

**MEDICAL EXAMINERS
BOARD[653]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby adopts new Chapter 9, "Permanent Physician Licensure," and amends Chapter 12, "Mandatory Reporting and Grounds for Discipline," Iowa Administrative Code.

The language regarding permanent licensure in current Chapter 11 has been incorporated into new Chapter 9, "Permanent Physician Licensure."

New Chapter 9 includes the following:

- Additional definitions used throughout the chapter;
- Provisions about when licensure is and is not required;

MEDICAL EXAMINERS BOARD[653](cont'd)

- Additional eligibility requirement that an applicant be at least 21 years of age and identification of the board-approved accrediting bodies for medical education and post-graduate training programs;
- Elimination of the distinction between licensure by examination and licensure by endorsement;
- Elaboration of the examination requirements for those examined in the past and for future applicants;
- Components of the permanent licensure application and requirements;
- The process used for reviewing permanent licensure applications and the role of staff, the licensure and examination committee and the board in granting or denying a license or requesting withdrawal of the application;
- A licensure application cycle;
- Licensure restrictions and the ways that the Board may impose them;
- The issuance of a permanent license, including how the first license is issued for a period of 2 to 26 months in order to get it in the birth month cycle;
- Establishing that a resident license becomes inactive when a permanent Iowa license is received;
- The requirement that licensees display the license in the licensee's primary location of practice;
- The requirement that the licensee inform the Board of a change of name or address within one month of the change;
- Identifying how a licensee's file is closed when the licensee dies;
- The process for renewing a permanent license;
- Broader definitions of "inactive status" and "reinstatement" that now encompass the terms formerly known as "lapsed," "delinquent" or "retired" licenses and the process of "reactivation"; a new process for making a license inactive and for reinstating it that eliminates the current reactivation process; mandatory training on identifying and reporting abuse and a continuing education requirement; elimination of fees formerly charged for inactive, lapsed or delinquent statuses; and a change in the fee for reinstatement;
- Addition of a process for reinstatement of a disciplined license;
- Addition of testing, competency evaluations and re-training programs as options that the Board may consider requiring for those who seek to reinstate but who have not been in practice in the United States or Canada for the past three years;
- The notification, appeal, and hearing procedures when a license is denied.

Requests for waiver or variance will be considered in conformance with 653—Chapter 3.

The amendment to Chapter 12, new subrule 12.40(5), explains how a physician whose license has been suspended or revoked may reinstate the license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0587B**. A public hearing was held on April 25, 2001. Public comment was received from one organization with the following concerns:

- That the definition of "incidentally called into this state in consultation with a physician and surgeon licensed in this state" in rule 653—9.1(147,148,150,150A) might have the unintended consequence of allowing the practice of telemedicine by out-of-state physicians. The Board is working on telemedicine rules that should address this issue. The question was raised as to what comprises a day, and this is answered in the adopted rules.

- That a three-year residency will be required of those who are not able to pass the licensure examinations in the allotted number of attempts and whether this is consistent with standard expectations and requirements in physician licensure. The Board believes this is a reasonable expectation.
- That "informal or nonpublic actions" are required to be reported in the process of applying for licensure. The commenter suggested that this term is vague and that physicians will not know what materials to submit. The Board needs information about informal or nonpublic actions reported from other boards.
- That a physician is required to notify the Board of a change of address or name within 30 days. The Board will not take action against these individuals; however, they cannot expect to receive license renewal information.
- That the license renewal grace period is shortened to two months and that there is liability exposure to the physician because the license appears to be expired even though it is in the grace period. Clarification of the process eliminated this concern.

The following changes were made from the Notice of Intended Action:

In rule 653—9.1(147,148,150,150A), use of the word "day" was clarified in the definition of "incidentally called into this state in consultation with a physician and surgeon licensed in this state." The revised definition reads as follows:

"Incidentally called into this state in consultation with a physician and surgeon licensed in this state" as set forth in Iowa Code section 148.2(5) means a physician licensed in another United States jurisdiction who acts in an advisory or instructional capacity to a physician with a permanent or special medical license in Iowa, for a period of not more than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day. The consulting physician shall be involved in the care of patients in Iowa only at the request of the Iowa physician requesting the consultation. The physician requesting the consultation shall retain the primary responsibility for the management of patients' care.

In paragraphs 9.2(2)"c" to "e," the phrase "who hold a current, active license in good standing in another United States jurisdiction and" was added following the words "physicians and surgeons" and "physicians and surgeons from out of state" to ensure that those physicians who can come into Iowa and practice without an Iowa license have a license in good standing in another United States jurisdiction.

In subparagraphs 9.4(2)"e"(1) and 9.4(6)"a"(1), language was added which provides that those enrolled in a joint M.D./Ph.D. or D.O./Ph.D. program may have ten years to successfully pass all three parts of the USMLE or COMLEX examinations rather than the seven years that others have.

In subparagraphs 9.4(2)"e"(6) and 9.4(6)"a"(4), the word "progressive" was added to the three-year postgraduate training requirement for those who fail USMLE or COMLEX too many times. Physicians with three one-year training programs do not have training that is as in-depth as the training found in one three-year program that is progressively more complex.

The Board adopted these amendments during a telephone conference call on May 11, 2001.

MEDICAL EXAMINERS BOARD[653](cont'd)

These amendments are intended to implement Iowa Code chapters 17A, 147, 148, 150, 150A, and 272C.

These amendments will become effective July 4, 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 [Ch 9, 12.40(5)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0587B**, IAB 4/4/01.

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ARC 0707B**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby adopts new Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The language regarding resident, special and temporary licensure in current Chapter 11 has been incorporated into new Chapter 10, "Resident, Special and Temporary Physician Licensure."

New Chapter 10 includes the following:

- Definition of terms used throughout the chapter.
- Expanded direction about when licensure is not required.
- General provisions and requirements for resident licensure.
- New eligibility requirements for resident licenses, including an age requirement and the names of the board-approved accrediting bodies for medical education.
- New relicensure requirements for resident licenses.
- Requirements of applicants for resident, special and temporary licenses, and the role of staff, the licensure and examination committee and the board in processing and approving, denying or renewing these licenses and any recourse, if allowed, to the applicant.
- New requirement of licensees to notify the board of a change of name or address within one month.
- New provisions for special licenses that require the applicant to be a medical school graduate and an academic staff member who does not meet the requirements for permanent licensure but is held in high esteem for unique contributions the individual has made to medicine and will make by practicing in Iowa. The license is not designed for regular faculty positions that could be filled by an individual qualified for permanent medical licensure in Iowa or for those who will be in training, i.e., fellows.
- New eligibility requirements for special licensure, including an age requirement and English proficiency.
- New application requirements for special licensure.
- New procedures for canceling special and temporary licenses.

- New renewal provisions for special licensees, including the addition of continuing education and mandatory training in identifying and reporting abuse.

- New provisions for temporary licenses authorizing the licensee to practice in a specific location or locations in Iowa for a three-month period with the possibility of one renewal. This license is intended for physicians with short-term assignments in Iowa who fulfill an urgent need and who clearly have no long-term need for licensure.

- New provisions for a second type of temporary license authorizing foreign physicians to practice under a restricted license with physician supervision while the foreign physicians are in Iowa for a short term for educational purposes which do not include entire training programs, e.g., residency or fellowship.

- New eligibility requirements for temporary licenses, including an age requirement.

- New application requirements for temporary licenses that require less documentation and allow speedier processing.

- Fees for resident, special and temporary licenses, renewals and relicensure.

- The renewal process for each category of license.

- Disciplinary measures for resident licenses and cancellation policy on special and temporary licenses.

- New requirement for temporary licensees to display the license and renewal in the primary location of practice.

Requests for waiver or variance will be considered in conformance with 653—Chapter 3.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0581B**. A public hearing was held on April 25, 2001. There was no public comment on this chapter.

The Board adopted Chapter 10 during a telephone conference call on May 11, 2001.

The only change from the Notice is the inclusion of an application cycle for each license type as is found in newly adopted Chapter 9. Provisions concerning the application cycle read as follows:

"If the applicant does not submit all materials within 90 days of the board office's last documented request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials."

These rules are intended to implement Iowa Code chapters 17A, 147, 148, 150, 150A, and 272C.

These rules will become effective July 4, 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 rules [Ch 10] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0581B**, IAB 4/4/01.

[Filed 5/11/01, effective 7/4/01]
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[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0709B**MEDICAL EXAMINERS
BOARD[653]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby rescinds Chapter 11, "Licensure Requirements," and adopts a new Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," Iowa Administrative Code.

New Chapter 11 contains rules on continuing medical education and mandatory training for identifying and reporting abuse.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001 as **ARC 0578B**. A public hearing was held on April 25, 2001. Public comment was received from one organization which did not request any change. The adopted rules include the following changes from the Noticed rules:

1. A definition of "approved training program" was added to rule 11.1(272C) in conformance with the mandatory training requirements spelled out in 2001 Iowa Acts, House File 680.

2. A physician may use training that is category 1 activity to meet both continuing education and mandatory training for identifying and reporting abuse requirements when the training occurs in the license period. The mandatory training requirement may be suspended in conformance with 2001 Iowa Acts, House File 680.

3. Two Iowa Code sections were added to the implementation sentence at the end of the chapter in conformance with 2001 Iowa Acts, House File 680.

The Board approved these rules during a telephone conference call on May 11, 2001.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, 150, 150A, and 272C.

These rules will become effective July 4, 2001.

The following amendment is adopted.

Rescind 653—Chapter 11 and adopt the following **new** chapter in lieu thereof:

**CHAPTER 11
CONTINUING EDUCATION AND
MANDATORY TRAINING FOR
IDENTIFYING AND REPORTING ABUSE**

653—11.1(272C) Definitions.

"Accredited provider" means an organization approved as a provider of category 1 activity by one of the following board-approved accrediting bodies: Accreditation Council for Continuing Medical Education, Iowa Medical Society, or the Council on Continuing Medical Education of the AOA.

"Active licensee" means any person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in Iowa who has met all conditions of licensure and maintains a current license to practice in Iowa.

"AMA" means the American Medical Association, a professional organization of physicians and surgeons.

"AOA" means the American Osteopathic Association, which accredits continuing medical education through its Council on Continuing Medical Education.

"Approved program or activity" means any category 1 activity offered by an accredited provider or any other program or activity meeting the standards set forth in these rules.

"Approved training program" means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

"Board" means the Iowa board of medical examiners.

"Carryover" means hours of category 1 activity earned in excess of the required hours in a license period that may be applied to the continuing education requirement in the subsequent license period; carryover may not exceed 20 hours of category 1 activity per renewal cycle.

"Category 1 activity" means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of the AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Activities designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credit by the American Academy of Family Physicians are accepted as equivalent to category 1 activities.

"Committee" means the licensure and examination committee of the board.

"COMVEX-USA" means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America, prepared by the National Board of Osteopathic Medical Examiners and administered by a licensing authority in any jurisdiction. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

"Continuing education" means education that is acquired by a licensee in order to maintain, improve, or expand skills and knowledge present at initial licensure or to develop new and relevant skills and knowledge.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at or completion of an approved category 1 activity.

"Inactive license" means any license that is not a current, active license. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated.

"Licensee" means any person licensed to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy in the state of Iowa.

"Mandatory training for identifying and reporting abuse" means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on mandatory reporting of child abuse and training requirements are in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are in Iowa Code section 235B.16.

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“SPEX” means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction.

653—11.2(272C) Continuing education credit and alternatives.

11.2(1) Continuing education credit may be obtained by attending category 1 activities as defined in this chapter.

11.2(2) The board shall accept the following as equivalent to 50 hours of category 1 activity: successful completion of one year of an approved residency or fellowship training program within the licensing period.

653—11.3(272C) Accreditation of providers. The board approves the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, and the Council on Continuing Medical Education of the AOA as organizations acceptable to accredit providers of category 1 activity.

653—11.4(272C) Continuing education and training requirements for renewal or reinstatement. A licensee shall meet the requirements in this rule to qualify for renewal of a permanent or special license or reinstatement of a permanent license.

11.4(1) Continuing education and mandatory training for identifying and reporting abuse.

a. Continuing education for permanent license renewal. Except as provided in these rules, a total of 40 hours of category 1 activity or board-approved equivalent shall be required for biennial renewal of a permanent license.

(1) To facilitate license renewal according to birth month, a licensee’s first license may be issued for less than 24 months. The number of hours of category 1 activity required of a licensee whose license has been issued for less than 24 months shall be reduced on a pro-rata basis.

(2) A licensee desiring to obtain credit for carryover hours shall report the carryover, not to exceed 20 hours of category 1 activity, on the renewal application.

(3) A licensee shall maintain a file containing records documenting continuing education activities, including dates, subjects, duration of programs, registration receipts where appropriate and any other relevant material, for four years after the date of the activity. The board may audit this information at any time within the four years.

b. Continuing education for special license renewal. A total of 20 hours of category 1 activity shall be required for annual renewal of a special license. No carryover hours are allowed.

c. Mandatory training for identifying and reporting abuse for permanent or special license renewal. The licensee shall complete the training as part of a category 1 activity or an approved training program. The licensee may utilize category 1 activity credit received for this training during the license period in which the training occurred to meet continuing education requirements in paragraph 11.4(1)“a.”

(1) A licensee who regularly provides primary health care to children shall indicate on the renewal application the completion of two hours of training in child abuse identification and reporting in the previous five years.

(2) A licensee who regularly provides primary health care to adults shall indicate on the renewal application the completion of two hours of training in dependent adult abuse identification and reporting in the previous five years.

(3) A licensee who regularly provides primary health care to adults and children shall indicate on the renewal application the completion of training on the identification and reporting of abuse in dependent adults and children. This training may be completed through separate courses as iden-

tified in subparagraphs (1) and (2) above or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

(4) A licensee shall maintain a file containing records documenting mandatory training for identifying and reporting abuse, including dates, subjects, duration of programs, and proof of participation, for five years after the date of the training. The board may audit this information at any time within the five-year period.

11.4(2) Exemptions from renewal requirements.

a. A licensee shall be exempt from the continuing education requirements in subrule 11.4(1) when, upon license renewal, the licensee provides evidence for:

(1) Periods that the licensee served honorably on active duty in the military;

(2) Periods that the licensee resided in another state or district having continuing education requirements for the profession and the licensee met all requirements of that state or district for practice therein;

(3) Periods that the licensee was a government employee working in the licensee’s specialty and assigned to duty outside the United States; or

(4) Other periods of active practice and absence from the state approved by the board.

b. The requirements for mandatory training on identifying and reporting abuse for license renewal shall be suspended for a licensee who provides evidence for:

(1) Periods described in paragraph 11.4(2)“a,” subparagraph (1), (2), (3), or (4); or

(2) Periods that the licensee resided outside of Iowa and did not practice in Iowa.

11.4(3) Extension for completion of or exemption from renewal requirements. The board may, in individual cases involving physical disability or illness, grant an extension of time for completion of, or an exemption from, the renewal requirements in subrule 11.4(1).

a. A licensee requesting an extension or exemption shall complete and submit a request form to the board that sets forth the reasons for the request and has been signed by the licensee and attending physician.

b. The board may grant an extension of time to fulfill the requirements in subrule 11.4(1).

c. The board may grant an exemption from the educational requirements for any period of time not to exceed one calendar year.

d. If the physical disability or illness for which an extension or exemption was granted continues beyond the period of waiver, the licensee must reapply for a continuance of the extension or exemption.

e. The board may, as a condition of any extension or exemption granted, require the applicant to make up a portion of the continuing education requirement by methods it prescribes.

11.4(4) Reinstatement requirement. An applicant for license reinstatement shall provide proof of successful completion of 80 hours of category 1 activity completed within 24 months prior to submission of the application for reinstatement or proof of successful completion of SPEX or COMVEX-USA within one year immediately prior to the submission of the application for reinstatement.

11.4(5) Cost of continuing education and mandatory training for identifying and reporting abuse. It is the responsibility of each licensee to finance the costs of continuing education and training.

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653—11.5(272C) Failure to fulfill requirements for continuing education and mandatory training for identifying and reporting abuse.

11.5(1) Disagreement over whether material submitted fulfills the requirements specified in rule 11.4(272C).

a. Staff will attempt to work with a licensee or applicant to resolve any discrepancy concerning credit for renewal or reinstatement.

b. When resolution is not possible, staff shall refer the matter to the committee.

(1) In the matter of a licensee seeking license renewal, staff shall renew the license if all other matters are in order and inform the licensee that the matter is being referred to the committee.

(2) In the matter of an applicant seeking reinstatement, staff shall reinstate the license if all other matters are in order and inform the applicant that the matter is being referred to the committee.

c. The committee shall consider the staff's recommendation for denial of credit for continuing education or mandatory training for identifying and reporting abuse.

(1) If the committee approves the credit, it shall authorize the staff to inform the licensee or applicant that the matter is resolved.

(2) If the committee disapproves the credit, it shall refer the matter to the board with a recommendation for resolution.

d. The board shall consider the committee's recommendations.

(1) If the board approves the credit, it shall authorize the staff to notify the licensee or applicant for reinstatement if all other matters are in order.

(2) If the board denies the credit, it shall:

1. Close the case;

2. Send the licensee or applicant an informal, nonpublic letter of warning, which may include recommended terms for complying with the requirements for continuing education or mandatory training for identifying and reporting abuse; or

3. File a statement of charges for noncompliance with the board's rules on continuing education or mandatory training for identifying and reporting abuse and for any other violations which may exist.

11.5(2) Informal appearance for failure to complete requirements for continuing education or mandatory training for identifying and reporting abuse.

a. The licensee or applicant may, within ten days after the date that the notification of the denial was sent by certified mail, request an informal appearance before the board.

b. At the informal appearance, the licensee or applicant will have the opportunity to present information, and the board will issue a written decision.

653—11.6(17A,147,148E,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 147 and 272C and sections 232.69 and 235B.16.

[Filed 5/11/01, effective 7/4/01]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0714B

**NATURAL RESOURCE
COMMISSION[571]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby rescinds Chapter 99, "Wild Turkey Fall Hunting," Iowa Administrative Code, and adopts a new Chapter 99, "Wild Turkey Fall Hunting by Residents."

These rules give the regulations for hunting wild turkeys during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements. The new chapter changes the procedures for obtaining licenses and requires hunters to register their kill through the electronic licensing system.

Notice of Intended Action was published March 7, 2001, as **ARC 0540B**. One change has been made to the Notice of Intended Action. Proposed rule 99.11(481A) has been deleted and the subsequent rule renumbered.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These rules will become effective July 4, 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 rules [Ch 99] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0540B**, IAB 3/7/01.

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ARC 0711B

**NATURAL RESOURCE
COMMISSION[571]**

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 106, "Deer Hunting," and adopts new Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

These rules give the regulations for hunting deer and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking and transportation tag requirements. The new chapter includes changes in shooting hours for regular gun seasons, clarifies the definitions of antlered deer, opens all counties to hunting for deer of either sex during the regular gun seasons, modifies the list of counties open to hunting antlerless deer during the special late season, clarifies the restrictions on types of licenses hunters may purchase, explains the new procedures for purchasing deer li-

NATURAL RESOURCE COMMISSION[571](cont'd)

censes by electronic methods, and clarifies that depredation licenses are available only to residents.

Notice of Intended Action was published March 7, 2001, as **ARC 0539B**. The following changes have been made to the Notice:

1. Paragraph 106.5(2)“a” was changed to include all Iowa counties.

2. Paragraph 106.5(2)“b” was changed by adding Decatur and Adair Counties.

3. Subrule 106.6(5) was changed from a listing of 21 counties to include 99 counties.

4. Rule 106.8(481A) was changed to allow all antlerless deer licenses to be sold directly to customers without a drawing.

5. Proposed rule 106.10(481A) was deleted in its entirety and the subsequent rules were renumbered.

These rules are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

These rules will become effective July 4, 2001.

The following amendment is adopted.

Rescind 571—Chapter 106 and adopt in lieu thereof the following **new** chapter:

CHAPTER 106

DEER HUNTING BY RESIDENTS

571—106.1(481A) Licenses. When hunting deer, all hunters must have in their possession a valid deer hunting license and a valid resident hunting license and must have paid the habitat fee (if normally required to have a hunting license and to pay the habitat fee to hunt). No person while hunting deer shall carry or have in possession any license or transportation tag issued to another person.

106.1(1) Bow season license. Paid bow licenses shall be valid for taking any deer statewide during the bow season, except that bow season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone.

106.1(2) Regular gun season license. Paid regular gun season licenses shall be valid for any deer, antlerless deer or antlered deer depending on the season, county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that regular gun season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone. In seasons, counties, or zones in which only antlered deer may be taken, antlered deer shall be defined as those deer having at least one antler 3 inches or longer.

106.1(3) Muzzleloader season license. Paid muzzleloader season licenses shall be valid during one of the muzzleloader seasons for any deer, antlerless deer or antlered deer, depending on the season, county or zone hunted. Licenses shall be valid statewide for the season designated on the license, except that muzzleloader season licenses for hunting antlerless deer shall be valid only in one county in the special antlerless zone. In seasons, counties, or zones in which only antlered deer may be taken, an antlered deer is defined as a deer having at least one antler 3 inches or longer.

106.1(4) Special late season license. Paid special late season deer licenses will be valid only for hunting antlerless deer during the special late season in one of the counties in the special antlerless zone.

106.1(5) Free licenses for landowners and tenants. Free licenses for eligible landowners and tenants shall be available for the youth/disabled hunter season, early and late muzzleloader seasons, or first and second regular gun sea-

sons. These licenses shall be valid for hunting any deer in the season(s) designated on the license and only on the farm unit of the landowner/tenant. A second free license valid for taking only antlerless deer in the special late season may be issued to landowners and tenants who have a portion of their farm unit in a county open during that season. The second free license shall be valid only in that portion of the farm unit located in a county open during the special late season.

571—106.2(481A) Season dates. Deer may be taken only during the following seasons:

106.2(1) Bow season. Deer may be taken by bow and arrow in accordance with the type of license issued from October 1 through the Friday before the first Saturday in December and from the Monday following the third Saturday in December through January 10 of the following year, except that special regulations may apply in deer population management areas (571—Chapter 105).

106.2(2) Regular gun seasons. Deer may be taken by gun only in accordance with the type, season and zone designated on the license from the first Saturday in December and continuing for five consecutive days (first regular gun season) or from the second Saturday in December and continuing for nine consecutive days (second regular gun season).

106.2(3) Muzzleloader seasons. Deer may be taken by muzzleloader in accordance with the type, season and zone designated on the license from the Saturday closest to October 14 and continuing for nine consecutive days (early muzzleloader season) or from the Monday following the third Saturday in December through January 10 of the following year (late muzzleloader season).

106.2(4) Special late season. Antlerless deer may be taken by shotgun, muzzleloading rifle, handgun or bow as permitted in 571—106.7(481A) from January 11 through January 17. All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for taking deer with a firearm shall apply.

571—106.3(481A) Shooting hours. Legal shooting hours shall be from one-half hour before sunrise to one-half hour after sunset in all seasons.

571—106.4(481A) Limits.

106.4(1) Bow season. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(2) Muzzleloader seasons. The daily bag limit is one deer per license. The possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.4(3) Regular gun seasons. The bag limit is one deer for each hunter in the party who has a valid deer transportation tag. The possession limit is one deer per license. "Possession" shall mean that the deer is in the possession of the person whose license number matches the number of the transportation tag on the carcass of the deer.

106.4(4) Special late season. The daily bag and possession limit is one deer per license. Tagging requirements are the same as for the regular gun seasons.

106.4(5) Maximum annual possession limit. The maximum annual possession limit for a resident deer hunter is one deer for each legal license and transportation tag obtained.

571—106.5(481A) Areas open to hunting.

106.5(1) Paid deer licenses. Hunters shall be restricted to the type of deer they shoot based on the season, dates, county or zone in which they hunt.

NATURAL RESOURCE COMMISSION[571](cont'd)

- a. Bow season. Any deer may be taken in all counties.
- b. Muzzleloader seasons. Any deer may be taken in all counties.
- c. Regular gun seasons. Any deer may be taken in all counties.

106.5(2) Paid antlerless deer licenses.

a. Paid antlerless deer licenses for the bow season, second regular gun season and late muzzleloader season shall be valid only for antlerless deer in all Iowa counties. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

b. Paid antlerless deer licenses for the special late season shall be valid only for antlerless deer and only in the following counties: Adair, Davis, Decatur, Van Buren, Ringgold, Taylor, Adams, Union, Fremont, Page and Montgomery. An antlerless deer is defined as a deer without a visible antler or with no antler longer than 7 inches.

106.5(3) Free landowner/tenant licenses. Free landowner/tenant licenses shall be valid for hunting any deer. Free regular gun season licenses shall be valid for both the first and second regular gun seasons.

106.5(4) Closed areas. There shall be no open seasons for hunting deer on the county roads immediately adjacent to or through Union Slough National Wildlife Refuge, Kossuth County, where posted accordingly. There shall be no open seasons for hunting deer on all portions of rights-of-way on Interstate Highways 29, 35, 80 and 380.

571—106.6(481A) License quotas and restrictions. Certain types of deer licenses will be restricted in the number issued or in the types of other deer licenses which may be purchased.

106.6(1) Bow season. An unlimited number of statewide bow licenses may be issued. A person who purchases a bow license may purchase the following additional licenses: one statewide gun license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(2) Regular gun seasons. An unlimited number of statewide licenses will be available for both the first and second regular gun seasons.

a. A person obtaining a paid license for the first regular gun season shall be eligible to purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow and late muzzleloader seasons; and up to two antlerless licenses for the special late season. No person obtaining a paid license for the first regular gun season shall be eligible to obtain a paid license for the second regular gun season.

b. A person obtaining a paid license for the second regular gun season shall be eligible to purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(3) Muzzleloader seasons.

a. Early muzzleloader season. No more than 7,500 paid statewide licenses will be sold. Fifty additional licenses will be issued through and will be valid only for the Iowa Army Ammunition Plant. No one may purchase more than one paid license for the early muzzleloader season. A hunter obtaining a paid early muzzleloader season license shall not be eligible to purchase any other statewide gun season license but may purchase the following additional licenses: a statewide bow license; up to two antlerless bow licenses; and up to two antlerless licenses for the special late season.

b. Late muzzleloader season. An unlimited number of statewide licenses may be issued for the late muzzleloader season. A person obtaining a paid late muzzleloader season license may purchase the following additional licenses: a statewide bow license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

106.6(4) Free landowner/tenant licenses. A person obtaining a free landowner/tenant license may purchase any combination of paid bow and gun licenses available to persons who are not eligible for landowner/tenant licenses as explained in 571—106.12(481A).

106.6(5) Antlerless-only licenses. Paid antlerless-only licenses will be available to eligible persons by county as follows:

Adair	300
Adams	500
Allamakee	550
Appanoose	600
Audubon	100
Benton	200
Black Hawk	50
Boone	200
Bremer	100
Buchanan	50
Buena Vista	50
Butler	250
Calhoun	50
Carroll	50
Cass	150
Cedar	200
Cerro Gordo	100
Cherokee	50
Chickasaw	200
Clarke	200
Clay	50
Clayton	850
Clinton	200
Crawford	150
Dallas	150
Davis	800
Decatur	800
Delaware	250
Des Moines	250
Dickinson	100
Dubuque	300
Emmet	100
Fayette	350
Floyd	200
Franklin	150
Fremont	200
Greene	100
Grundy	50
Guthrie	300
Hamilton	50
Hancock	100

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Hardin	150
Harrison	150
Henry	300
Howard	200
Humboldt	100
Ida	50
Iowa	300
Jackson	300
Jasper	150
Jefferson	400
Johnson	400
Jones	350
Keokuk	250
Kossuth	200
Lee	400
Linn	350
Louisa	200
Lucas	200
Lyon	100
Madison	250
Mahaska	150
Marion	200
Marshall	100
Mills	100
Mitchell	150
Monona	150
Monroe	400
Montgomery	200
Muscatine	250
O'Brien	50
Osceola	50
Page	200
Palo Alto	50
Plymouth	100
Pocahontas	50
Polk	100
Pottawattamie	200
Poweshiek	150
Ringgold	800
Sac	50
Scott	200
Shelby	100
Sioux	100
Story	100
Tama	200
Taylor	800
Union	400
Van Buren	800
Wapello	400
Warren	100
Washington	400
Wayne	300
Webster	200

Winnebago	100
Winneshiek	300
Woodbury	200
Worth	150
Wright	150

106.6(6) Special late season licenses. Paid antlerless licenses for the special late season will be available in counties designated in subrule 106.5(2) and are included in the quotas established in subrule 106.6(5). A person may obtain up to two paid antlerless licenses for the special late season regardless of any other paid or free gun or bow licenses the person may have obtained.

571—106.7(481A) Method of take. Permitted weapons and devices vary according to the type of season.

106.7(1) Bow season. Except as provided in 571—15.5(481A), only recurve, compound or longbows with broadhead arrows will be permitted for taking deer during the bow season. Arrows with chemical or explosive pods are not permitted.

106.7(2) Regular gun seasons. Only 10-, 12-, 16- and 20-gauge shotguns shooting single slugs and muzzleloaders and handguns as described in 106.7(3) will be permitted for taking deer during the regular gun seasons.

106.7(3) Muzzleloader seasons. Only muzzleloading rifles will be permitted for taking deer during the early muzzleloader season. During the late muzzleloader season, deer may be taken with a muzzleloader, handgun or bow. Muzzleloading rifles are defined as flintlock or percussion cap lock muzzleloaded rifles and muskets of not less than .44 and not larger than .775 caliber, shooting single projectiles only. Centerfire handguns must be .357 caliber or larger shooting straight-walled cartridges propelling an expanding-type bullet (no full-metal jacket) and complying with all other requirements provided in Iowa Code section 481A.48. Revolvers, pistols and black powder handguns must have a 4-inch minimum barrel length. There can be no shoulder stock or long-barrel modifications to handguns. Black powder handguns must be .44 caliber or larger, shooting single projectiles only.

106.7(4) Prohibited weapons and devices. The use of dogs, domestic animals, bait, rifles other than muzzleloaded, handguns except as provided in 106.7(2) and 106.7(3), crossbows except as otherwise provided, automobiles, aircraft, or any mechanical conveyance or device, including electronic calls, is prohibited, except that paraplegics and single or double amputees of the legs may hunt from any stationary motor-driven land conveyance. "Bait" means grain, fruit, vegetables, nuts, hay, salt, mineral blocks, or any other natural food materials; commercial products containing natural food materials; or by-products of such materials transported to or placed in an area for the intent of attracting wildlife. Bait does not include food placed during normal agricultural activities. "Paraplegic" means an individual with paralysis of the lower half of the body with involvement of both legs, usually due to disease of or injury to the spinal cord. It shall be unlawful for a person, while hunting deer, to carry or have in possession a rifle other than a muzzleloading rifle that meets the requirements of 106.7(3) or to carry or have in possession a handgun during the bow and early muzzleloader seasons.

106.7(5) Discharge of firearms from roadway. No person shall discharge a shotgun shooting slugs or muzzleloader from a highway during the regular gun seasons in all counties and parts of counties north of Highway 30 and west of

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Highway 63. "Highway" means the way between property lines open to the public for vehicle traffic as defined in Iowa Code section 321.1(78).

571—106.8(481A) Procedures to obtain licenses. All paid and free resident deer hunting licenses must be obtained using the electronic licensing system for Iowa (ELSI). Licenses and license applications may be purchased from ELSI license agents or by calling the ELSI telephone ordering system.

106.8(1) Early muzzleloader season licenses. Early muzzleloader licenses will be issued through a random drawing. Applications for these licenses may be purchased through ELSI beginning the second Saturday in July through the first Sunday in August. No one may purchase more than one application for the early muzzleloader season during the application period.

a. If applications are sold in excess of the license quota, a drawing will be held to determine which applicants will receive licenses. Licenses or refunds of license fees will be mailed to applicants after the drawing is completed. License agent writing fees, department administrative fees and telephone order charges will not be refunded.

b. If the license quota is not filled, the excess licenses will be sold on a first-come, first-served basis through ELSI beginning the second Saturday after the close of the application period until the quota is filled, or until the last day of the hunting period for which that license is valid, or until the final day any license for the current year may be purchased, whichever occurs first.

106.8(2) All other deer licenses. All other paid and free deer hunting licenses may be obtained beginning the second Saturday after the close of the initial application period for early muzzleloader licenses until the quota (if any) is filled, or through the last day of the hunting period for which the license is valid, or until the final day any licenses for the current year may be obtained, whichever occurs first.

a. Persons eligible for antlerless licenses may purchase no more than one antlerless license for the bow, second regular gun or late muzzleloader season and one antlerless license for the special late season during the first four weeks of the purchase period.

b. After the first four weeks of the purchase period, one more antlerless license may be purchased for the bow, second regular gun or late muzzleloader season and one more antlerless license may be purchased for the special late season.

571—106.9(481A) Transportation tag. A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to the carcass of each deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer is killed or before the carcass is moved in any manner, whichever occurs first. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

571—106.10(481A) Youth deer and severely disabled hunts.

106.10(1) Licenses.

a. Youth deer hunt. A special youth deer license may be issued to any Iowa resident who is at least 12 years old but

not over 15 years old on September 1. The youth license may be paid or free to persons eligible for free licenses. If the youth obtains a free landowner/tenant license, it will count as the one free license for which the youth's family is eligible. The youth must possess a valid hunter safety certificate to obtain a license.

Each participating youth must be accompanied by an adult who possesses a regular hunting license and has paid the habitat fee (if the adult is normally required to have a hunting license and to pay the habitat fee to hunt). Only one adult may participate for each youth hunter. The accompanying adult must not possess a firearm or bow and must be in direct company of the youth at all times. A person may obtain only one youth deer license but may also obtain one of the following additional licenses: one statewide bow or statewide gun license; up to two antlerless licenses for the bow, second regular gun or late muzzleloader season; and up to two antlerless licenses for the special late season.

b. Severely disabled hunt. Any severely disabled Iowa resident meeting the requirements of Iowa Code section 321L.1(8) may be issued one license to hunt deer during the youth season. A person applying for this license must either possess a disabilities parking permit or provide a completed form from the department of natural resources. The form must be signed by a physician verifying that the person's disability meets the criteria defined in Iowa Code section 321L.1(8). A person between 16 and 65 years of age must also possess a regular hunting license and have paid the habitat fee to obtain a license (if normally required to have a hunting license and to pay the habitat fee to hunt). A severely disabled person obtaining this license may obtain one additional statewide bow license.

106.10(2) Season dates. Deer of either sex may be taken statewide during the 16-day period that ends on the first Sunday in October.

106.10(3) Shooting hours. Legal shooting hours will be one-half hour before sunrise to one-half hour after sunset each day regardless of weapon used.

106.10(4) Limits and license quotas. An unlimited number of licenses may be issued. The daily and season bag and possession limit is one deer per license. A person may shoot and tag a deer only by utilizing the license and tag issued in the person's name.

106.10(5) Method of take and other regulations. Deer may be taken with shotgun, bow or muzzleloaded rifles as permitted in 571—106.7(481A). All participants must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122. All other regulations for obtaining licenses or hunting deer shall apply.

106.10(6) Procedures for obtaining licenses. Paid and free youth licenses and licenses for severely disabled hunters may be obtained through ELSI beginning the second Saturday after the close of the initial application period for other deer licenses through the last day of the youth season.

571—106.11(481A) Deer depredation management. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions. The producer or designee must

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meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.11(2) Eligibility. Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding \$1,000 in a single growing season, or the likelihood that damage will exceed \$1,000 if preventive action is not taken, or a documented history of at least \$1,000 damage annually in previous years.

106.11(3) Depredation management plans. Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds \$1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents only to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) Depredation permits. Three types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for the regular deer license fee for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No in-

dividual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) A depredation license issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for hunting antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking any deer, antlerless deer or antlered deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved maintains a deerproof fence.

(5) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(6) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(7) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Agricultural depredation permits. Agricultural depredation permits will be issued to a landowner or designated tenant who is a resident of Iowa who has sustained at least \$1,000 of damage to agricultural crops if the resident is cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or has an approved DNR deer depredation plan.

(1) Agricultural depredation permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.

(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.

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(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.

(4) Times, places, and other restrictions will be specified on the permit.

(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.

d. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

e. Depredation licenses, agricultural depredation permits and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

f. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

106.11(5) Disposal. It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate through the local conservation officer the disposal of deer offered to the public. Charitable organizations will have the first opportunity to take deer offered to the public. No producer shall keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

571—106.12(481A) Eligibility for free landowner/tenant deer licenses.

106.12(1) Who qualifies for free deer hunting license. Owners or tenants of a farm unit, or a member of an owner's or tenant's family who resides with the owner or tenant, are eligible for free deer licenses. The owner or tenant does not have to reside on the farm unit but must be actively engaged in farming it. Nonresident landowners do not qualify.

106.12(2) Who qualifies as a tenant. A "tenant" is a person other than the landowner who is actively engaged in the operation of the farm. The tenant may be a member of the landowner's family, including in some circumstances the landowner's spouse or child, or a third party who is not a family member. The tenant does not have to reside on the farm unit.

106.12(3) What "actively engaged in farming" means. Landowners and tenants are "actively engaged in farming" if they personally participate in decisions about farm operations and those decisions, along with external factors such as weather and market prices, determine their profit or loss for the products they produce. Tenants qualify if they farm land owned by another and pay rent in cash or in kind. A farm manager or other third party who operates a farm for a fee or a laborer who works on the farm for a wage and is not a family member does not qualify as a tenant.

106.12(4) Landowners who qualify as active farmers. These landowners:

a. Are the sole operator of a farm unit (along with immediate family members), or

b. Make all decisions about farm operations, but contract for custom farming or hire labor to do some or all of the work, or

c. Participate annually in decisions about farm operations such as negotiations with federal farm agencies or negotiations about cropping practices on specific fields that are rented to a tenant, or

d. Raise specialty crops from operations such as orchards, nurseries, or tree farms that do not necessarily produce annual income but require annual operating decisions about maintenance or improvements, or

e. May have portions of the farm enrolled in a long-term land retirement program such as the Conservation Reserve Program (CRP) as long as other farm operations occur annually, or

f. Place their entire cropland in the CRP or other long-term land retirement program with no other active farming operation occurring on the farm.

106.12(5) Landowners who do not qualify. These landowners:

a. Use a farm manager or other third party to operate the farm, or

b. Cash rent the entire farm to a tenant who is responsible for all farm operations including following preapproved operations plans.

106.12(6) Where free licenses are valid. A free license is valid only on that portion of the farm unit that is in a zone open to deer hunting. "Farm unit" means all parcels of land that are operated as a unit for agricultural purposes and are under lawful control of the landowner or tenant. Individual parcels of land do not need to be adjacent to one another to be included in the farm unit. "Agricultural purposes" includes but is not limited to field crops, livestock, horticultural crops (e.g., from nurseries, orchards, truck farms, or Christmas tree plantations), and land managed for timber production.

106.12(7) How many free licenses may be obtained. The maximum number of free licenses for the youth/disabled season, bow season, regular gun seasons or muzzleloader seasons is two per farm unit, one for the landowner (or family member) and one for the tenant (or family member). If there is no tenant, the landowner's family may obtain only one license. A tenant or the tenant's family is entitled to only one free license even if the tenant farms land for more than one landowner. An additional free license for the special late season may be issued to eligible landowners and tenants as described in subrule 106.1(5).

These rules are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.24.

[Filed 5/11/01, effective 7/4/01]

[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0719B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4(3), the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts new Chapter 16, "Waivers and Variances," Iowa Administrative Code.

Chapter 16 is intended to provide guidelines under which the Board will consider waivers and variances to its rules, as allowed in the Iowa Administrative Procedure Act and mandated by the Governor's Executive Order Number 11.

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 21, 2001, as **ARC 0561B**. Public comment was received from the Petroleum Marketers of Iowa, a trade organization that represents approximately 1,100 of the active UST sites in Iowa. The petroleum marketers expressed support for the rule making; however, they also wanted to ensure that the rules would not allow circumvention of eligibility deadlines that nearly all Iowa UST owners have complied with to date.

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

These rules shall become effective July 4, 2001.

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

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 rules [Ch 16] is being omitted. These rules are identical to those published under Notice as **ARC 0561B**, IAB 3/21/01.

[Filed 5/11/01, effective 7/4/01]
[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0704B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Nursing Home Administrators hereby rescinds Chapter 141, "Licensure of Nursing Home Administrators," and adopts a new Chapter 141 with the same title; rescinds Chapter 142, "Nursing Home Administration Education Programs"; amends Chapter 143, "Continuing Education for Nursing Home Administrators"; adopts new Chapter 144, "Discipline for Nursing Home Administrators"; and adopts new Chapter 145, "Fees," Iowa Administrative Code.

The amendments adopt a new chapter for licensure, adopt a new chapter for discipline, change the word "penalty" to "late" in the rule regarding reinstatement of a lapsed license, amend the criteria for completion of continuing education and adopt a new chapter for fees.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 21, 2001, as **ARC 0567B**.

A public hearing was held on April 11, 2001, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa.

The following public comments were received at the public hearing:

- There was serious concern over proposed rule 141.5(155) that limits a person serving as a provisional administrator to doing so for six months in an entire career. The change in rule 141.5(155) makes it retroactive for two years. Commenters believed this was not adequate notice for such a significant change.

- Another comment regarding paragraph 141.4(1)"d" stated that, if the required number of practicum hours has been completed satisfactorily, it should not matter whether

the practicum student has also carried out the duties required of a job the student holds in the same facility.

- Paragraph 141.4(1)"e" would allow a practicum student to be paid. The commenter supported this provision and expressed that it does not make sense for a student to quit a job at a facility only to be rehired in order to be paid for the practicum hours in the same facility.

- Commenters proposed that more flexibility be added to the requirements under subrule 141.3(2) in order to remove obstacles to and provide more incentive for pursuing a career as a nursing home administrator.

- Another commenter supported the change made in the wording for required courses. The new wording is "gerontology or aging-related coursework."

- The commenters also want the Board to pursue reciprocal agreements with other states.

The following changes were made to the Notice of Intended Action: Definitions for "licensure by endorsement" and "reciprocal license" were added to rule 141.1(155). Examination requirements in subrule 141.2(2) of the Notice are now contained in new rule 141.3(155). Subsequent rules were renumbered accordingly. Discussion at the Board meeting was held regarding the requirement that the practicum experience be outside designated work hours if the person is employed at the facility. The Board agreed with the commenter that this requirement does make sense for the student and deleted paragraph "d" of renumbered subrule 141.4(1) from the rule and relettered paragraphs "e" and "f" as "d" and "e." The Board discussed commenters' concerns regarding the six-month limitation on a provisional license. The Department of Inspections and Appeals also has a rule regarding this subject. 481—subrule 58.8(4) reads as follows:

"58.8(4) A provisional administrator may be appointed on a temporary basis by the nursing facility licensee to assume the administrative duties when the facility, through no fault of its own, has lost its administrator and has been unable to replace the administrator provided that no facility licensed under Iowa Code chapter 135C shall be permitted to have a provisional administrator for more than 6 months in any 12-month period and further provided that:

"a. The department has been notified prior to the date of the administrator's appointment;

"b. The board of examiners for nursing home administrators has approved the administrator's appointment and has confirmed such appointment in writing to the department." Abuses of past versions of the board of examiners for nursing home administrators' rule on this subject have occurred and the board feels it necessary to protect the public from unqualified administrators. The board also feels that a person could ask for a waiver if needed.

The Board deleted the language regarding the interview process in renumbered subrule 141.10(4). Language was added to the rule regarding the reinstatement of an inactive license stating that the reinstated license should be renewed at the next scheduled renewal cycle. New subrule 141.10(6) stating that a licensee who is on inactive status during the initial licensure period and who reinstates the license before the first license expiration date will then not be required to complete continuing education. Renumbered subrule 141.12(6) was not adopted as the Board felt it was no longer needed; subsequent subrules were renumbered accordingly.

These amendments were adopted by the Board of Examiners for Nursing Home Administrators on May 3, 2001.

These amendments will become effective July 4, 2001.

These amendments are intended to implement Iowa Code section 147.76 and chapters 17A, 155 and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The following amendments are adopted.

ITEM 1. Rescind 645—Chapter 141 and adopt in lieu thereof the following **new** chapter:

CHAPTER 141
LICENSURE OF NURSING HOME
ADMINISTRATORS

645—141.1(155) Definitions. For purposes of these rules, the following definitions shall apply:

“Administrator” means a licensed nursing home administrator.

“Board” means the board of examiners for nursing home administrators.

“CNHA” means a certified nursing home administrator.

“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.

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

“License expiration date” means December 31 of odd-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice nursing home administration to an applicant who is currently licensed in another state.

“NAB” means National Association of Boards of Examiners of Long Term Care Administrators.

“Reciprocal license” means the issuance of an Iowa license to practice nursing home administration to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of examiners for nursing home administrators to license persons who have the same or similar qualifications as those required in Iowa.

645—141.2(155) Requirements for licensure. The following criteria shall apply to licensure:

1. An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Examiners for Nursing Home Administrators, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075;

2. An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board;

3. Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Examiners for Nursing Home Administrators. The fees are nonrefundable;

4. The applicant shall have official copies of academic transcripts sent directly from the school(s) to the board;

5. The applicant shall provide satisfactory evidence of the completion of the long-term care practicum;

6. An applicant shall successfully pass the approved national examination;

7. Licensees who were issued their initial licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

8. Incomplete applications that have been on file in the board office for more than two years shall be:

- Considered invalid and shall be destroyed; or
- Maintained upon request of the applicant. The applicant is responsible for requesting that the file be maintained.

9. Notification of eligibility for licensure shall be sent to the licensee by the board.

645—141.3(155) Examination requirements. The following criteria shall apply to the written examination:

1. In order to be eligible to take the written examination, the supporting data and documentation required by the board are completed and on file at the board office.

2. The supporting data and documentation must be received at least 30 days prior to the date the applicant desires board eligibility determination for the examination.

3. Notification shall be sent by the board office to the examination service of an applicant’s eligibility for the examination.

4. Each applicant who fails the national examination may apply to the board for reexamination. The applicant shall not take the national examination more than three times. If the applicant fails a third national examination, education in areas established by the board must be obtained before another examination will be allowed or a license is issued.

645—141.4(155) Educational qualifications. An applicant for licensure as a nursing home administrator shall fulfill the educational requirements of one of the following:

141.4(1) Applicants with degrees in health care administration, health services administration, nursing home administration or long-term care administration. An applicant for licensure to practice as a nursing home administrator shall possess a baccalaureate or postbaccalaureate degree in health care administration, health services administration, nursing home administration or long-term care administration from a college or university currently accredited by one of the following: a regional accrediting agency, an organization affiliated with the National Commission on Accrediting (Council of Post-secondary Accreditation), or the National Association of Boards of Examiners of Long Term Care Administrators. The practicum requirements are as follows:

a. The applicant shall complete 12 semester hours of long-term health care practicum (720 clock hours). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; and human resource management; or

b. The designated faculty of the academic program may verify completion of the required clock hours of practicum in writing to the board if the practicum is not a 12-semester-hour practicum; or

c. The school may waive up to 320 clock hours of practicum based on prior academic coursework or experience. The designated faculty shall provide written verification of completion of a minimum of 400 clock hours of practicum and that each of the nine required areas of practicum has been satisfied; or

d. Substitution of one year of long-term health care administration experience supervised by a licensed administrator may be allowed at the discretion of the board. Attestation of the supervised experience shall be supplied in writing by the supervising licensed administrator. The attestation shall verify the equivalent of the required 80 clock hours in each of the nine required areas of practicum; or

141.4(2) Applicants with degrees in other disciplines. An applicant shall possess a baccalaureate degree in any other discipline from a college or university currently accredited by a regional accrediting agency or organization affiliated with the National Commission on Accrediting (Council of

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Post-secondary Accreditation). The applicant's coursework shall show satisfactory completion of the following:

- a. Ten semester hours of business management, accounting or business law or any combination thereof;
- b. Six semester hours of gerontology or aging-related coursework in disciplines including but not limited to the sciences and humanities;
- c. Twelve semester hours in health care administration including but not limited to the areas of organizational management, regulatory management, human resources management, resident care management, environmental services management, and financial management; and
- d. Practicum. The applicant shall complete a practicum as follows:

(1) The applicant shall complete 12 semester hours of long-term health care practicum (720 clock hours). There are nine areas of practicum requiring 80 clock hours each: social services; dietary; legal aspects and government organizations; nursing; environmental services; activities/community resources; business administration; administrative organization; and human resource management; or

(2) The designated faculty of the academic program may verify completion of the required clock hours of practicum in writing to the board if the practicum is not a 12-semester-hour practicum; or

(3) The school may waive up to 320 clock hours of practicum based on prior academic coursework or experience. The designated faculty shall provide written verification of completion of a minimum of 400 clock hours of practicum and that each of the nine required areas of practicum has been satisfied; or

(4) Substitution of one year of long-term health care administration experience supervised by a licensed administrator may be allowed at the discretion of the board. Attestation of the supervised experience shall be supplied in writing by the supervising licensed administrator. The attestation shall verify the equivalent of the required 80 clock hours in each of the nine required areas of practicum.

141.4(3) Foreign-trained applicants. Foreign-trained nursing home administrators shall:

a. Provide an equivalency evaluation of their educational credentials by International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, California 90231-3665, telephone (310) 258-9451, Web site www.ierf.org, or E-mail at info@ierf.org. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a nursing home administration program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

645—141.5(155) Practicum experience.

141.5(1) The practicum experience shall be performed under the supervision of a preceptor (licensed administrator) in a licensed nursing home in accordance with the following:

- a. The facility must have a licensed capacity of no fewer than 25 beds.
- b. The facility cannot be owned or operated by a parent, spouse or sibling of the student.
- c. The student may not be a provisional administrator of any facility during the time of the practicum.
- d. The practicum student may be compensated while completing the practicum experience.
- e. The preceptor (licensed administrator):

(1) Shall hold a current license in good standing as a nursing home administrator;

(2) Shall have at least two years' experience as a licensed nursing home administrator;

(3) Shall be present in the facility during at least 75 percent of the student's practicum; and

(4) Cannot be related to the student as a parent, spouse or sibling.

141.5(2) The board may grant waivers of the total practicum requirement based on previous life experience. Substitution of no less than one year of long-term health care administration experience may be allowed at the discretion of the board. Applications for waiver of the practicum may be obtained from the board office and shall be accompanied by supporting documentation, verified by both the applicant and the applicant's employer.

645—141.6(155) Provisional administrator. Under certain limited circumstances, and only upon the filing of an application requesting approval, a provisional administrator may be appointed to serve as the administrator of a nursing home. A provisional administrator is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed six months. The six-month appointment runs from the date approved by the board, and the months in service do not need to be consecutive. The person serving as a provisional administrator shall not be permitted to serve in that capacity for more than a total of six months in an entire career.

141.6(1) The limited circumstances under which the request for a provisional appointment shall be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator or circumstances which prevent the immediate transfer of the licensed administrator's duties to another licensed administrator.

141.6(2) Applications for a provisional appointment shall be in writing on a form prescribed by the board. Applicants shall meet the following minimum qualifications:

- a. Be at least 18 years of age.
- b. Be employed on a full-time basis of no less than 32 hours per week to perform the duties of the nursing home administrator.
- c. Be knowledgeable of the nursing home administrator's domains of practice including resident care management, human resources management, financial management, environmental management, regulatory management and organizational management.
- d. Be without a history of unprofessional conduct or denial of or disciplinary action against a license to practice nursing home administration or any other profession by any lawful licensing authority for reasons outlined in 645—Chapter 144.

141.6(3) The board expressly reserves the right to withdraw approval of a provisional appointment. Withdrawal of approval shall be based on information or circumstances warranting such action. The provisional administrator shall be notified in writing by certified mail.

645—141.7(155) Licensure by endorsement. An applicant who has been a licensed nursing home administrator under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

1. Submits to the board a completed application;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

2. Pays the licensure fee;
3. Provides official copies of the academic transcripts sent directly from the school to the board office;
4. Shows evidence of licensure requirements similar to those required in Iowa;
5. Provides verifications of licenses from all other states that have been sent directly from those states to the board office; and
6. Provides one of the following:
 - The official NAB examination score sent directly from NAB to the board or from the state in which the applicant was first licensed; or
 - Evidence of certification as a nursing home administrator (CNHA) in good standing with the American College of Health Care Administrators.

645—141.8(155) Licensure by reciprocal agreement. The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of nursing home administrator applicants.

645—141.9(155) License renewal.

141.9(1) The biennial license renewal period for a license to practice nursing home administration shall begin on January 1 of each even-numbered year and end on December 31 of the next odd-numbered year. All licensees shall renew on a biennial basis.

141.9(2) A renewal of license application and continuing education report form to practice as a nursing home administrator licensee shall be mailed to the licensee at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fee(s) on or before the renewal date.

a. The licensee shall submit the completed application and continuing education report form with the renewal fee(s) to the board office before the license expiration date.

b. Individuals who were issued their initial licenses within six months of the license renewal date will not be required to renew their licenses until the next renewal two years later.

c. 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.

d. Persons licensed to practice as nursing home administrators shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

141.9(3) Late renewal. If the renewal fee(s), continuing education report and renewal application are received within 30 days after the license expiration date, the late fee for failure to renew before expiration shall be charged.

141.9(4) When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

645—141.10(272C) Exemptions for inactive practitioners.

141.10(1) A licensee who is not engaged in practice in the state of Iowa may be granted a waiver of 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 practice in the state of Iowa without first complying with all regulations governing reinstatement after exemption. The application for a certificate of exemption shall be submitted upon the form provided by the board. A licensee must hold a current license in order to ap-

ply for exempt status. The licensee shall apply for inactive status before the license expiration date.

141.10(2) Reinstatement of exempted, inactive practitioners. Inactive practitioners who have requested and been granted a waiver of compliance with the renewal requirements and who have obtained a certificate of exemption shall, prior to engaging in the practice of the profession in Iowa, satisfy the requirements for reinstatement as outlined in 645—143.10(272C).

141.10(3) Verifications of license(s) are required from any state in which the licensee has practiced since the Iowa license became inactive.

141.10(4) Inactive licensees may be required to meet with the board and, if the board finds reasonable doubt that the licensee displays knowledge of the domains of practice, the board may require the applicant to successfully complete any or all of the minimum qualifications, which may include additional education or training for licensure prior to license reinstatement.

141.10(5) Licensees shall renew at the next scheduled renewal. Licensees whose licenses were reinstated within six months prior to the renewal shall not be required to renew their licenses until the renewal date two years later.

141.10(6) A new licensee who is on inactive status during the initial license renewal time period and who reinstates the license before the first license expiration date will not be required to complete continuing education for that first license renewal time period only. Forty hours of continuing education will be required for every renewal thereafter.

141.10(7) Reinstatement of inactive license after exemption. The following chart illustrates the requirements for reinstatement of an inactive license after exemption.

An applicant shall satisfy the following requirements:	
Submit written application for reinstatement to the board	Required
Pay the renewal fee	\$50
Pay the reinstatement fee	\$50
Furnish evidence of full-time practice in another state of the U.S. or the District of Columbia and complete continuing education	Current valid license and at least 40 hours of continuing education
OR	
Furnish evidence of completion of hours of approved continuing education. The continuing education hours must be completed within the two most recent bienniums prior to the date of application for reinstatement.	40 hours
Total fees and continuing education hours required for reinstatement:	\$100 and 40 hours

645—141.11(272C) Lapsed licenses.

141.11(1) If the renewal fee(s) and continuing education report are received more than 30 days after the license expiration date, the license is lapsed. An application for reinstatement must be filed with the board accompanied by the reinstatement fee, the renewal fee(s) for each biennium the license is lapsed and the late fee for failure to renew before expiration. The licensee may be subject to an audit of the licensee's continuing education report.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

141.11(2) Licensees who have not fulfilled the requirements for license renewal or for an exemption in the required time frame will have a lapsed license and shall not engage in the practice of nursing home administration. Practicing without a license may be cause for disciplinary action.

141.11(3) In order to reinstate lapsed licenses, licensees shall comply with all requirements for reinstatement as outlined in 645—143.6(272C).

141.11(4) After the reinstatement of a lapsed license, the licensee shall renew at the next scheduled renewal cycle and complete continuing education required for the biennium.

141.11(5) Verifications of license(s) are required from any state in which the licensee has practiced since the Iowa license lapsed.

141.11(6) Reinstatement of a lapsed license. The following chart illustrates the requirements for reinstatement based on the length of time a license has lapsed.

An applicant shall satisfy the following requirements:	30 days after expiration date up to 1 renewal	2 renewals	3 renewals	4 renewals
Submit written application for reinstatement to the board	Required	Required	Required	Required
Pay the renewal fee(s)	\$50	\$100	\$150	\$200
Pay the late fee	\$50	\$50	\$50	\$50
Pay the reinstatement fee	\$50	\$50	\$50	\$50
Furnish evidence of satisfactory completion of continuing education requirements. The continuing education hours must be completed within the two most recent bienniums prior to the date of application for reinstatement.	40 hours	40 hours	40 hours	40 hours
Total fees and continuing education hours required for reinstatement:	\$150 and 40 hours	\$200 and 40 hours	\$250 and 40 hours	\$300 and 40 hours

645—141.12(272C) License denial.

141.12(1) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the board not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined in these rules shall specifically describe the facts to be contested and determined at the hearing.

141.12(2) If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C.

These rules are intended to implement Iowa Code chapters 17A, 147, 155, and 272C.

ITEM 2. Rescind and reserve 645—Chapter 142.

ITEM 3. Amend rule **645—143.6(272C)**, numbered paragraphs **“3”** and **“5,”** as follows:

3. Pays ~~all the penalty fees~~ late fee which have been assessed by the board for failure to renew;

5. Provides evidence of satisfactory completion of continuing education requirements ~~during the period since the license lapsed~~ completed within the two most recent bienniums prior to the date of application for reinstatement. The total number of continuing education hours required for license reinstatement is 40.

ITEM 4. Amend paragraph **143.10(4)“b”** as follows:

b. Completion of 40 hours of approved continuing education. *The continuing education hours shall be completed within the two most recent bienniums prior to the date of application for reinstatement.*

ITEM 5. Adopt **new 645—Chapter 144** as follows:

**CHAPTER 144
DISCIPLINE FOR
NURSING HOME ADMINISTRATORS**

645—144.1(147,155,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed \$1,000, when the board determines that a licensee is guilty of any of the following acts or offenses:

144.1(1) Obtaining or attempting to obtain a license by fraud or deceit;

144.1(2) Professional incompetence;

144.1(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of nursing home administration or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established;

144.1(4) Habitual intoxication or addiction to the use of drugs;

144.1(5) Conviction of a felony that is substantially related to the qualifications, functions or duties of a nursing home administrator and is evidence of unfitness to perform as a nursing home administrator in a manner consistent with protecting the public health, safety and welfare, in the courts of this state or any other state, territory, country or of the United States. As used in this paragraph, “conviction of a felony” shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law, without regard to its designation elsewhere. A copy of the record of conviction or plea of guilty shall be conclusive as evidence;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

144.1(6) Revocation, suspension or annulment of a license to practice nursing home administration or another profession by any lawful licensing authority; or other disciplinary action taken against the license by any lawful licensing authority; or denial of a license or refusal of the renewal of a license by any lawful licensing authority pursuant to disciplinary proceedings;

144.1(7) Willful or repeated violations of any statute, rule or regulation pertaining to a nursing home;

144.1(8) Knowingly aiding, assisting, procuring, or advising any person to practice nursing home administration contrary to this chapter or to the rules and regulations of the board; or knowingly performing any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice nursing home administration;

144.1(9) Failure to report to the board every adverse judgment in a professional or occupational malpractice action to which the licensee is a party and every settlement of a claim against the licensee alleging malpractice;

144.1(10) Use of untrue or improbable statements in advertisements;

144.1(11) Failure to report to the board in writing a change of name or address within 60 days after the change occurs;

144.1(12) Any falsification or misrepresentation contained in any report or document attesting to the facts, conditions and activities of the internship or work experience and submitted by the applicant, administrator/preceptor or other participants may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to fines and any other penalties provided by law.

This rule is intended to implement Iowa Code chapters 147, 155, and 272C.

ITEM 6. Adopt **new** 645—Chapter 145 as follows:

CHAPTER 145
FEES

645—145.1(147,155) License fees. All fees are nonrefundable.

145.1(1) License fee for license to practice nursing home administration is \$100.

145.1(2) Biennial license renewal fee for each license for each biennium is \$50.

145.1(3) Late fee for failure to renew before expiration is \$50.

145.1(4) Reinstatement fee for a lapsed license or an inactive license is \$50.

145.1(5) Duplicate license fee is \$10.

145.1(6) Verification of license fee is \$10.

145.1(7) Returned check fee is \$15.

145.1(8) Disciplinary hearing fee is a maximum of \$75.

145.1(9) Provisional license fee is \$100.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 155.

[Filed 5/11/01, effective 7/4/01]

[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0691B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 139A.3, the Department of Public Health hereby rescinds Chapter 1, "Notification and Surveillance of Reportable Diseases," Chapter 2, "Ophthalmia Prophylactics," and Chapter 3, "Clinical Laboratories," and adopts a new Chapter 1, "Notification and Surveillance of Reportable Diseases," Iowa Administrative Code.

The rules in Chapters 1, 2, and 3 describe diseases and conditions that are reportable and approve the eye prophylactics used at birth. These rules implement changes in Iowa Code chapter 139A which expand the requirements for laboratory reporting and mandate due process language. These rules combine rules from Chapters 1, 2, and 3 into a single chapter.

Notice of Intended Action was published in the April 4, 2001, Iowa Administrative Bulletin as **ARC 0595B**. A public hearing was held on April 24, 2001, from 10 to 11 a.m. in the ICN room of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. Four additional ICN sites were available. Attendance was zero at all sites. No written comments were received.

The noticed version of subrule 1.6(5) stated that laboratories are required to report results obtained in the examination of all specimens which yield evidence of or are reactive for a reportable disease or condition. A revision of this is as follows: Laboratories are required to report cases of reportable diseases and results obtained in the examination of all specimens which yield evidence of or are reactive for sexually transmitted diseases. This change complies with Iowa Code chapter 139A.

These rules are intended to implement Iowa Code sections 135.100 to 135.103, 139.2(17), 139A.3, 139A.21, and 141.21 to 141.25.

These rules will become effective July 4, 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 rules [rescind Chs 1 to 3 and adopt a new Ch 1] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 0595B**, IAB 4/4/01.

[Filed 5/10/01, effective 7/4/01]

[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0694B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health hereby gives Notice of In-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

tended Action to amend Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials"; Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials"; Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials"; Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists"; and Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," Iowa Administrative Code.

The following itemize the adopted changes.

Items 1, 3, 5, and 24 amend the rules to reflect current federal regulations.

Item 2 rescinds a definition of "mammogram" which is already defined in Chapter 41. It also adds to the definition of "mammography" a cross reference that directs the reader to Chapter 41 for additional information.

Item 4, relating to a compatibility issue with the U.S. Nuclear Regulatory Commission, places into the rule a policy regarding federal facilities.

Item 6 changes a requirement for dental facilities. The commitment for this change was made to the dental community because the performance of the dental X-ray equipment does not change until after about four years.

Item 7 allows an exemption for X-ray equipment that is not manufactured with the audible signal and cannot be altered to include the audible signal. This change allows the use of X-ray equipment manufactured before the federal requirements for audible signal.

Item 8 allows the facility to alter the procedures if alteration is preapproved by the agency.

Item 9 allows the use of specific radioactive material in order to keep current with industry technology.

Items 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19 correct cross references.

Item 20 is amended to include wording that was omitted from the original amendment.

Item 21 changes time requirements that were in the original draft to match the final wording accepted by the regulating state bodies.

Item 22 expands the definition of "mammography" to exclude a procedure that is not used for diagnostic purposes.

Item 23 shortens the time requirement for testing because the test is now scheduled upon demand instead of only three times a year.

Item 25 is changed to be consistent with the rule for retention of records for accelerators.

Item 26 is changed to exempt testing only.

Item 27 adds registration requirements to include all facilities producing radioactive material.

Item 28 adds training and testing requirements for operators not previously included except by policy.

Item 29 is changed to be consistent with the X-ray and sealed source rules.

Items 30 and 31 add a time frame not previously included.

Item 32 changes time frames to be consistent with other X-ray rules.

Items 33, 34, and 35 add wording to include all types of accelerator facilities.

The State Board of Health adopted these amendments at the Board's regular meeting on May 9, 2001.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0596B**. A public hearing was held on April 24, 2001, at 8:30 a.m. in the Conference Room, Department of Public Health, 401 S.W. 7th Street, Suite D, Des Moines,

Iowa. There were no persons in attendance, and two sets of written comments were received, reviewed, and considered. Since all comments indicated agreement, no changes to the Notice of Intended Action were made.

These amendments will become effective July 4, 2001.

These amendments are intended to implement Iowa Code chapter 136C.

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 38, 39, 41, 42, 45] is being omitted. These amendments are identical to those published under Notice as **ARC 0596B**, IAB 4/4/01.

[Filed 5/10/01, effective 7/4/01]

[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0692B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 73, "Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)," Iowa Administrative Code.

The purpose of amending Chapter 73 is to bring Iowa rules into compliance with recent changes to the federal guidelines for the Special Supplemental Nutrition Program for Women, Infants, and Children related to vendor management, and to modify Iowa rules that were more restrictive than federal guidelines related to food selection and participant access to services.

These amendments include modification of the Iowa Administrative Code where it was more restrictive than the federal rules in the following areas: participant income verification, timing of collection of blood work data, claiming of WIC food instruments by a proxy, and food selection criteria.

These amendments modify the definitions of vendor monitoring to be consistent with recent changes in Title 7 of the Code of Federal Regulations, and clearly define vendor selection criteria to exclude vendors that do not provide full service to participants or are not currently used by participants. The federal regulations now specify that 5 percent of authorized vendors receive more intense and time-consuming compliance investigations. It is prudent not to authorize unnecessary vendors.

Clarification is made in participant violations that are no longer pertinent since the Iowa WIC program has moved to checks with only one signature.

The Department provided an opportunity for its local contractors, representatives of the grocery industry, and internal staff of the Department of Public Health to review the revised chapter prior to submission of the Notice of Intended Action.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0598B**. A public hearing was held on April 26, 2001. No comments were received and no changes have been made to the Noticed rules.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are subject to waiver pursuant to the Department's variance and waiver provisions contained at 641—Chapter 178.

These amendments are intended to implement Iowa Code section 135.11. The effective date is July 4, 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 Ch 73] is being omitted. These amendments are identical to those published under Notice as **ARC 0598B**, IAB 4/4/01.

[Filed 5/10/01, effective 7/4/01]
[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0693B**PUBLIC HEALTH
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 178, "Variances and Waivers of Public Health Administrative Rules," Iowa Administrative Code, and adopts new Chapter 178 with the same title.

The new chapter is intended to implement Executive Order Number 11 executed and signed by the Governor on September 14, 1999. The Executive Order directs state rule-making authorities to adopt uniform rules regarding waivers from administrative rules. This chapter is in response to that order. The chapter is also intended to implement Iowa Code section 17A.9A, which establishes additional terms and conditions concerning the issuance of waivers.

Notice of Intended Action regarding these rules was published in the Iowa Administrative Bulletin on February 21, 2001, as **ARC 0508B**. A public hearing was held on March 13, 2001, from 11 a.m. to 12 noon in the ICN Conference Room, 321 E. 12th Street, Sixth Floor, Des Moines, Iowa. Additional ICN sites were also scheduled for the hearing. There were no persons in attendance at the hearing, and no comments were received.

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

These rules will become effective July 4, 2001.

These rules are intended to implement Iowa Code section 17A.9A and chapter 135.

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 rules [Ch 178] is being omitted. These rules are identical to those published under Notice as **ARC 0508B**, IAB 2/21/01.

[Filed 5/10/01, effective 7/4/01]
[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0701B**REVENUE AND FINANCE
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421B.11, 452A.59, and 453A.25, the Department of Revenue and Finance hereby adopts amendments to Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 82, "Cigarette Tax," Chapter 83, "Tobacco Tax," and Chapter 84, "Unfair Cigarette Sales," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIII, Number 17, page 1322, on February 21, 2001, as **ARC 0512B**.

Item 1 clarifies that, with certain exceptions, dyed fuel which meets federal regulations and is added at a terminal is exempt from tax if used for a nontaxable purpose.

Items 2, 3, and 6 provide an exemption from tax for motor fuel, cigarettes, and tobacco products sold by Indians to Indians of their own tribe on their own reservation. The motor fuel, cigarettes, and tobacco products must be purchased by the Indian seller with the tax included in the purchase price and the Indian purchaser or the tribe of which the Indian is a member may obtain the exemption by filing a claim for refund of the tax paid.

Item 4 changes a Code section reference to reflect renumbering resulting from recent legislation.

Item 5 reflects more accurate terminology.

Item 7 amends the cigarette minimum price example to show current prices and tax rates.

These amendments differ from those published under Notice of Intended Action in order to permit the tribe of which the Indian purchaser is a member to file a claim for refund in behalf of the Indian purchaser.

These amendments will become effective July 4, 2001, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 421B, 452A, and 453A.

The following amendments are adopted.

ITEM 1. Amend rule **701—68.3(452A)** by adopting the following **new** unnumbered paragraph:

Indelible dye meeting United States Environmental Protection Agency and Internal Revenue Service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel can only be used for a nontaxable purpose listed in Iowa Code section 452A.17, subsection 1, paragraph "a." However, this exemption does not apply to fuel used for idle time, power takeoffs, reefer units, or pumping credits, or fuel used by contract carriers.

ITEM 2. Amend rule **701—68.8(452A)** by adopting the following **new** subrule:

68.8(18) Refund of tax—Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are tribal members are exempt from the tax. However, Indian sellers are subject to the record-keeping requirements of Iowa Code chapter 452A. The fuel must be purchased by the Indian seller with the tax included in the purchase price, unless the seller's status as a particular licensee authorizes the seller to purchase fuel tax-free. The tax exemption is allowed to the Indian pur-

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

chaser by the purchaser's filing a claim for refund of the tax paid or the tribe of which the Indian purchaser is a member filing a claim for refund of the tax paid by the tribe on fuel sold to the Indian purchaser.

ITEM 3. Amend subrule **82.4(5)"b"** as follows:

b. Sales by or to Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are ~~tribe tribal~~ members are exempt from the tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). The Indians *Indian sellers* are subject to the ~~permit~~ *record-keeping* requirements of Iowa Code chapter 453A. *The cigarettes must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on cigarettes sold to the Indian purchaser.* ~~Indians who have purchased or obtained cigarettes from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.6(2), 453A.36(1) and 453A.37.~~

ITEM 4. Amend rule 701—83.4(453A) as follows:

701—83.4(453A) Tax on little cigars. "Little cigars" as defined in Iowa Code section 453A.42(5) means any roll for smoking made wholly or in part of tobacco not meeting the definition of cigarette as contained in Iowa Code section 453A.1(2)(3) which either weighs three pounds or less per thousand or weighs more than three pounds per thousand (excluding packaging weight) and has a retail price of two and one-half cents or less per little cigar. All of the provisions applicable to cigarettes concerning the rate, imposition, method of payment and affixing of stamps apply equally to little cigars. The tax on little cigars is to be paid on the purchase of stamps by cigarette distributors or cigarette manufacturers who hold valid permits. The reporting requirements contained in section 453A.15 and rule 701—82.9(453A) shall pertain equally to the distribution of little cigars, and whenever information as to cigarettes is required to be reported, the same is required as to little cigars.

This rule is intended to implement Iowa Code sections 453A.42(5) and 453A.43.

ITEM 5. Amend rule 701—83.10(453A) as follows:

701—83.10(453A) Return Credits and refunds of taxes. Credits for tobacco products destroyed, returned to manufacturers or exported are provided in subrule 83.6(1). If the credits exceed the average monthly tax liability of the distributor, based upon the prior 12 tax periods, a refund may be issued.

~~The only other return of tax paid on tobacco products is for a refund Credits and refunds to a consumer who paid the tax pursuant to as per Iowa Code section 453A.43(2).—This refund shall be made for the same reasons and upon the same basis as credits and refunds to distributors.~~

This rule is intended to implement Iowa Code section 453A.47.

ITEM 6. Amend subrule 83.11(2) as follows:

83.11(2) Sales by or to Indians. Sales by Indians to other Indians of their own tribe on federally recognized Indian reservations or settlements of which they are ~~tribe tribal~~ members are exempt from the tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). The Indians

Indian sellers are subject to the ~~license~~ *record-keeping* requirements of Iowa Code chapter 453A. *The tobacco products must be purchased by the Indian seller with the tax included in the purchase price. The tax exemption is allowed to the Indian purchaser by the purchaser's filing a claim for refund of the tax paid or to the tribe of which the Indian purchaser is a member by the tribe's filing a claim for refund of the tax paid by the tribe on tobacco products sold to the Indian purchaser.* ~~Indians who have purchased or obtained tobacco products from an Indian reservation source and come within the taxing jurisdiction of the state are subject to the provisions of Iowa Code sections 453A.43(2) and 453A.50.~~

ITEM 7. Amend rule **701—84.2(421B)** by striking the existing example and inserting in lieu thereof the following **new** example:

Manufacturer's list price per 1000 cigarettes	\$115.70
Invoice price to wholesaler	\$115.70
Less 2% discount	2.31
Plus ½ of the tax	<u>9.00</u>
Basic cost of cigarettes	\$122.39
Plus 3% of basic cost	<u>3.67</u>
Retailer's basic cost	\$126.06
Plus ½ of the tax	<u>9.00</u>
Minimum cost to wholesaler per 1000 cigarettes	\$135.06
Per carton	\$27.01
Less ½ state tax	<u>1.80</u>
Retailer's basic cost	\$25.21
Plus 6% of basic cost	1.51
Plus ½ of state tax	<u>1.80</u>
Minimum cost to retailer	\$28.52
Per pack	2.86/pack

[Filed 5/11/01, effective 7/4/01]

[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

ARC 0690B

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.9A and 161A.4(1), the Division of Soil Conservation hereby adopts new Chapter 8, "Waiver or Variance of Rules," Iowa Administrative Code.

These rules are intended to comply with Executive Order Number 11 and with Iowa Code section 17A.9A, which provides for waivers or variances of administrative rules. These rules are based on the Attorney General's uniform waiver rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0579B**.

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

SOIL CONSERVATION DIVISION[27](cont'd)

These rules are intended to implement Iowa Code chapters 161A and 17A.

These rules will become effective on July 6, 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 rules [Ch 8] is being omitted. These rules are identical to those published under Notice as **ARC 0579B**, IAB 4/4/01.

[Filed 5/10/01, effective 7/6/01]

[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0716B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 8D.3, 17A.3 and 17A.9A and Executive Order Number 11, the Iowa Telecommunications and Technology Commission hereby adopts new Chapter 16, "Uniform Waiver and Variance Rules," and amends Chapter 17, "Miscellaneous," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 4, 2001, as **ARC 0593B**.

The purpose of these rules is to comply with Executive Order Number 11, which requires state agencies to adopt a uniform waiver rule, and Iowa Code section 17A.9A. Current rule 751—17.6(8D), which pertains to waivers and modifications, is rescinded to prevent any inconsistency between the rules, the statute and the Executive Order.

Item 1 describes the waiver procedure.

Item 2 rescinds a current rule that is inconsistent with the waiver procedure described in new Chapter 16.

A public hearing was held on April 25, 2001. No members of the public appeared. No public comments were received concerning these amendments.

After further review of the rules as noticed, the Commission made nonsubstantive changes in subrule 16.2(1) to clarify that the Commission shall consider the legislative intent of the statute as opposed to the rule. Rule 16.7(17A, ExecOrd11) was reorganized to read more clearly. The rule now reads as follows:

751—16.7(17A, ExecOrd11) Voiding or cancellation. A waiver or variance issued by the commission pursuant to this chapter may be withdrawn, canceled, modified, declared void or revoked if, after appropriate notice and hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver or variance order withheld or misrepresented material facts relevant to the propriety or desirability of granting the waiver or variance; or

2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

3. The subject of the waiver order has failed to comply with all conditions contained in the order; or

4. The waiver or variance is contrary to the public health, safety and welfare in light of newly discovered evidence or changed circumstances.

The Commission adopted these rules on May 10, 2001.

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

These amendments will become effective July 4, 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 [Ch 16, 17.6] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0593B**, IAB 4/4/01.

[Filed 5/11/01, effective 7/4/01]

[Published 5/30/01]

[For replacement pages for IAC, see IAC Supplement 5/30/01.]

ARC 0680B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on May 8, 2001, adopted amendments to Chapter 132, "Iowa Scenic Byway Program," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the February 7, 2001, Iowa Administrative Bulletin as **ARC 0424B**.

The rules were originally adopted in 1998. One two-year program cycle is complete. Members of the scenic byway advisory council made suggestions to improve the rules based on their experience with the first program cycle. The Department is amending the rules as a result of these suggestions. The amendments:

- Add a table setting out the sequence of events of a two-year program cycle.
- Clarify that the Department will provide necessary signs and accompanying posts and hardware for newly designated scenic byways.
- Clarify that the overall rating calculated for a potential route is a quality rating, and that, in addition to an overall quality rating that is above "average," at least 50 percent of the length of the route must be rated above "average."
- Correct the name of the Department's contact office for scenic byways.

Waivers are not provided because the purpose of the amendments is to clarify and improve the readability of the existing rules.

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

These amendments are intended to implement Iowa Code chapter 306D.

These amendments will become effective July 4, 2001.

Rule-making actions:

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Amend subrules 132.1(2) and 132.1(3) as follows:

132.1(2) Overview. Under the Iowa scenic byway program, proposed routes are identified via an application process. The department inventories and evaluates the proposed routes. The advisory council selects the routes to be designated. The department designates the routes as scenic byways and provides identifying signs for the designated routes.

132.1(3) Information and forms. Information, instructions and application forms may be obtained from the Corridor Development, Office of Project Planning Design, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 2. Amend subrules 132.5(1) and 132.5(2) as follows:

132.5(1) Program cycle. The scenic byway program shall operate on a two-year cycle, with the following steps and timetable:

Step	Timetable
Deadline for submission of applications	October 1 of even-numbered years
Field inventories of proposed routes	April to October of odd-numbered years
Evaluation and rating of proposed routes	November to February following field inventories
Designation and signing of routes	March to August of even-numbered years

Subrules 132.5(2) to 132.5(7) further explain each step of the program cycle.

132.5(2) Application. Application to designate a route as a scenic byway shall be on a form provided by the department and shall be submitted to the office of project planning corridor development by the application deadline. The application must be accompanied by a document indicating approval of the designation from the city council of each city and the board of supervisors of each county through which the proposed route passes.

~~**132.5(2) Deadline for submission.** The deadline for submission of applications is October 1 every other year. However, the first deadline is November 1, 1998. This is the be-~~

~~ginning of a program cycle. Applications shall be submitted to the office of project planning.~~

ITEM 3. Amend subrule 132.5(4), introductory paragraph, as follows:

132.5(4) Field inventory. ~~In the spring, summer and fall following the application deadline, the~~ The department shall conduct a field inventory of proposed routes. The department shall collect the following information for each proposed route:

ITEM 4. Amend subrules 132.5(5) to 132.5(7) as follows:

132.5(5) Rating and evaluation. ~~In the fall or winter of the second year of the program cycle, the~~ Evaluation and rating. The department shall compile and evaluate the field inventory data for each proposed route, develop calculate an overall quality rating for each proposed route, and prepare a written evaluation of each proposed route report documenting these findings. ~~The~~ A potential quality rating for a particular route ranges from "excellent" to "very poor." The midpoint is "average."

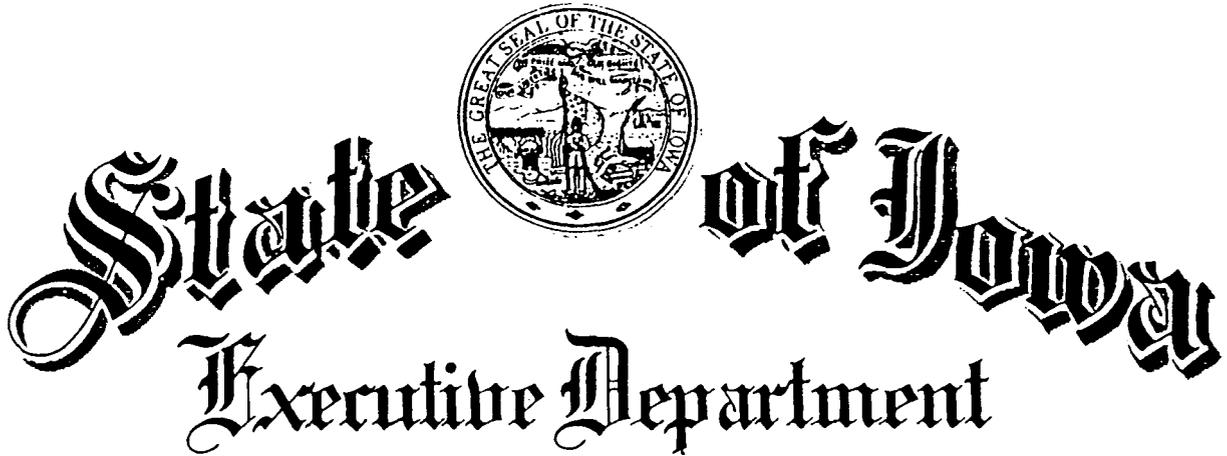
132.5(6) Selection. The advisory council shall review the ratings and evaluations and ratings and select the routes to be designated based on this information and any other information the council may have obtained regarding the routes. ~~To be selected, a route~~ For a route to be designated, it must have an overall quality rating that is above "average." Also, at least 50 percent of the length of the route must be rated above "average."

132.5(7) Designation and signing. ~~In the spring or early summer of the second year of the program cycle, the department shall designate the selected routes as scenic byways and provide scenic byway signs. Signing. The department shall provide the necessary state scenic byway signs and accompanying posts and hardware for the newly designated scenic byways.~~

[Filed 5/8/01, effective 7/4/01]
[Published 5/30/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/30/01.

AGENCY	RULE	DELAY
Public Health Department[641]	38.8(11) [IAB 4/4/01, ARC 0597B , Item 6]	Effective date of May 9, 2001, delayed 70 days by the Administrative Rules Review Committee at its meeting held May 4, 2001. [Pursuant to §17A.4(5)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA
 IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*** EXECUTIVE ORDER NUMBER EIGHTEEN**

- WHEREAS,** Iowa Code § 19B.2 states that “it is the policy of this state to provide equal employment opportunity within state government to all persons;” and
- WHEREAS,** Executive Order Number Seven was issued on September 14, 1999 to memorialize the philosophy of this administration that discrimination against any executive branch applicant or employee by executive branch personnel, for any reason, will not be tolerated; and
- WHEREAS,** Through court order, Executive Order Number Seven has been declared to be null and void, and of no effect; and
- WHEREAS,** as the Chief Executive Magistrate for the State of Iowa, I intend to implement the state’s equal employment opportunity policy, within state government, to the fullest extent allowable under state law; and
- WHEREAS,** the Iowa Department of Personnel is the central agency responsible for state personnel management, including oversight of the state’s merit employment policy, as well as its equal opportunity, affirmative action and workforce diversity efforts throughout state government; and
- WHEREAS,** state law establishes the Equal Opportunity in Employment Task Force created pursuant to executive order, or its successor; and
- WHEREAS,** this administration will remain committed to the full implementation of the state’s equal employment opportunity, affirmative action, and workforce diversity programs by ensuring that this policy is followed by each agency within the executive branch.

NOW, THEREFORE, I, THOMAS J. VILSACK, Governor of the State of Iowa, by the power vested in me under the laws and the constitution of the State of Iowa do hereby order that:

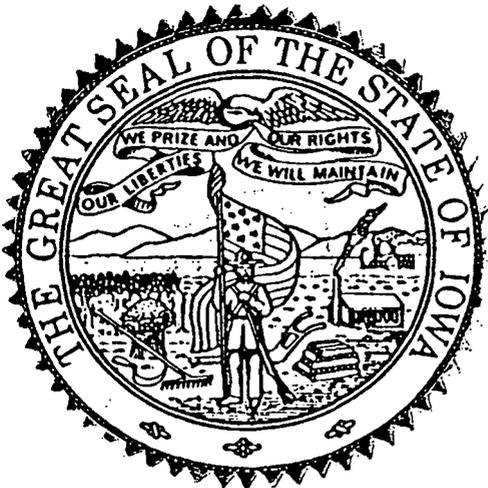
- I. Executive Order Number Seven, issued on September 14, 1999, shall be rescinded. In its place, this Executive Order Number EIGHTEEN, shall be enacted and followed by all state agencies within the executive branch of government to the fullest extent allowable under the law.
- II. I reaffirm the policy of the State of Iowa to provide equal opportunity in state employment to all persons. The director of each state agency within the executive branch of government will be responsible for assisting with the implementation of this policy, along with the other provisions outlined in this Order to the fullest extent allowable under the law. Annually, as part of the report mandated by Chapter 19B.5, the director of the Iowa Department of Personnel shall submit a report to this office describing any observations made by the department regarding the implementation of this policy by executive branch agencies.
- III. I reaffirm the policy of the State of Iowa to effectively administer affirmative action and workforce diversity programs within state government. The state's affirmative action programs shall have as its purpose to remedy any past or present discriminatory practices to the fullest extent allowable under the law. The state's workforce diversity program shall identify and seek to dismantle all policies, practices, or other barriers that limit the effective recruitment, employment, appointment, assignment, or advancement of all persons who are otherwise qualified to serve within the executive branch of state government. The state's diversity program shall be implemented to the fullest extent allowable under the law.
- IV. I direct the Iowa Department of Personnel to create and administer the state's workforce diversity program. The workforce diversity program shall promote a work environment that values the contribution that each employee can make and creates an inclusive work environment where awareness of, and respect for, those employee differences are promoted. Further, the workforce diversity program shall be managed in a manner that contributes to the business objectives of the state. The director shall report the progress of the state's workforce diversity program to this office in its annual report to this office.
- V. The Task Force for Equal Opportunity in Employment shall be created pursuant to Iowa Code § 19A.1(3). The task force will be established to: (a) advise the department of personnel as it identifies problems that may impede the state's progress toward the full utilization of state residents and the diversification of the state's workforce; (b) monitor the state's progress toward achieving its affirmative action goals; and (c) make recommendations to the Governor on initiatives that are designed to help the state meet its equal opportunity, workforce diversity, and affirmative action goals.
- VI. Members on the Task Force for Equal Opportunity in Employment shall be appointed by the Governor.
- VII. The Lieutenant Governor, or Governor's designee, shall chair the Task Force for Equal Opportunity in Employment. The task force will be charged with the tasks listed below.
 - A. The task force shall design a system to advise the department of personnel as it identifies problems that may limit equal employment opportunities or workforce diversity within state government.
 - B. The task force shall design a system to monitor the state's progress toward achieving its affirmative action goals.

- C. The task force shall prepare a comprehensive report on the status of the state's equal opportunity, affirmative action, and diversity policies, for review by the Governor by April 30, 2001. The report shall contain the recommendations of the task force for reassessing the state's equal opportunity and affirmative action policies in light of current legal and demographic trends. The report shall assess the following items:
1. the employment rates and patterns for people within state government over the past fifteen years;
 2. specific barriers that may limit employment and promotion opportunities within state government for all persons;
 3. the success of equal opportunity and affirmative action policies previously implemented by the state;
 4. the status of state and federal equal employment and affirmative action laws;
 5. the likelihood that the state's equal opportunity affirmative action and diversity policies, on their own, can assure the full utilization of all persons within state government.

The comprehensive report may include any additional information that the task force deems to be important and relevant.

VIII. The task force shall hold regular meetings at a centralized location.

IX. The Iowa Department of Personnel shall provide staff support to the task force, as needed, to enable the task force to fulfill its responsibilities.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done in Des Moines, Iowa, this 28th day of March in the year of our Lord Two Thousand One.

Thomas J. Vilsack
Governor

ATTEST:

Chester J. Culver by Dean Leman
Chester J. Culver
Secretary of State
Chief Deputy

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