



# 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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**CITATION of Administrative Rules**

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

441 IAC 79 (Chapter)

441 IAC 79.1(249A) (Rule)

441 IAC 79.1(1) (Subrule)

441 IAC 79.1(1)"a" (Paragraph)

441 IAC 79.1(1)"a"(1) (Subparagraph)

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

## Schedule for Rule Making 2002

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 4 '02	Jan. 23 '02	Feb. 12 '02	Feb. 27 '02	Mar. 1 '02	Mar. 20 '02	Apr. 24 '02	July 22 '02
Jan. 18	Feb. 6	Feb. 26	Mar. 13	Mar. 15	Apr. 3	May 8	Aug. 5
Feb. 1	Feb. 20	Mar. 12	Mar. 27	Mar. 29	Apr. 17	May 22	Aug. 19
Feb. 15	Mar. 6	Mar. 26	Apr. 10	Apr. 12	May 1	June 5	Sept. 2
Mar. 1	Mar. 20	Apr. 9	Apr. 24	Apr. 26	May 15	June 19	Sept. 16
Mar. 15	Apr. 3	Apr. 23	May 8	May 10	May 29	July 3	Sept. 30
Mar. 29	Apr. 17	May 7	May 22	May 24	June 12	July 17	Oct. 14
Apr. 12	May 1	May 21	June 5	June 7	June 26	July 31	Oct. 28
Apr. 26	May 15	June 4	June 19	June 21	July 10	Aug. 14	Nov. 11
May 10	May 29	June 18	July 3	July 5	July 24	Aug. 28	Nov. 25
May 24	June 12	July 2	July 17	July 19	Aug. 7	Sept. 11	Dec. 9
June 7	June 26	July 16	July 31	Aug. 2	Aug. 21	Sept. 25	Dec. 23
June 21	July 10	July 30	Aug. 14	Aug. 16	Sept. 4	Oct. 9	Jan. 6 '03
July 5	July 24	Aug. 13	Aug. 28	Aug. 30	Sept. 18	Oct. 23	Jan. 20 '03
July 19	Aug. 7	Aug. 27	Sept. 11	Sept. 13	Oct. 2	Nov. 6	Feb. 3 '03
Aug. 2	Aug. 21	Sept. 10	Sept. 25	Sept. 27	Oct. 16	Nov. 20	Feb. 17 '03
Aug. 16	Sept. 4	Sept. 24	Oct. 9	Oct. 11	Oct. 30	Dec. 4	Mar. 3 '03
Aug. 30	Sept. 18	Oct. 8	Oct. 23	Oct. 25	Nov. 13	Dec. 18	Mar. 17 '03
Sept. 13	Oct. 2	Oct. 22	Nov. 6	Nov. 8	Nov. 27	Jan. 1 '03	Mar. 31 '03
Sept. 27	Oct. 16	Nov. 5	Nov. 20	Nov. 22	Dec. 11	Jan. 15 '03	Apr. 14 '03
Oct. 11	Oct. 30	Nov. 19	Dec. 4	Dec. 6	Dec. 25	Jan. 29 '03	Apr. 28 '03
Oct. 25	Nov. 13	Dec. 3	Dec. 18	Dec. 20	Jan. 8 '03	Feb. 12 '03	May 12 '03
Nov. 8	Nov. 27	Dec. 17	Jan. 1 '03	Jan. 3 '03	Jan. 22 '03	Feb. 26 '03	May 26 '03
Nov. 22	Dec. 11	Dec. 31	Jan. 15 '03	Jan. 17 '03	Feb. 5 '03	Mar. 12 '03	June 9 '03
Dec. 6	Dec. 25	Jan. 14 '03	Jan. 29 '03	Jan. 31 '03	Feb. 19 '03	Mar. 26 '03	June 23 '03
Dec. 20	Jan. 8 '03	Jan. 28 '03	Feb. 12 '03	Feb. 14 '03	Mar. 5 '03	Apr. 9 '03	July 7 '03
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Friday, January 4, 2002	January 23, 2002
16	Friday, January 18, 2002	February 6, 2002
17	Friday, February 1, 2002	February 20, 2002

**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

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The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, January 8, 2002, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Warehouse receipts, 90.12, Notice ARC 1211B, also Filed Emergency ARC 1212B ..... 12/26/01

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Housing fund, 25.2, 25.4(1)"a"(3), 25.4(1)"c," 25.5, 25.5(5)"b," 25.6(5), 25.6(8), 25.8, 25.9(1), 25.9(2), 25.10, Filed Emergency After Notice ARC 1095B ..... 12/26/01  
Community development fund, 41.1, 41.2(1), 41.2(2), 41.4, 41.6, Filed ARC 1193B ..... 12/26/01

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**EDUCATION DEPARTMENT[281]**

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**HUMAN SERVICES DEPARTMENT[441]**

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**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

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**NURSING BOARD[655]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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 Student loan default or noncompliance, adopt ch 18, Filed **ARC 1219B** ..... 12/26/01

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**PERSONS WITH DISABILITIES DIVISION[431]**

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Waiver rules, adopt ch 7, Notice **ARC 1208B** ..... 12/26/01

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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**STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Administration; confidentiality of attorney work product; personally identifiable information; waivers;  
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**STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]**

HUMAN RIGHTS DEPARTMENT[421]"umbrella"

Waiver rules, adopt ch 7, Notice **ARC 1196B** ..... 12/26/01

**TRANSPORTATION DEPARTMENT[761]**

Project cost reporting requirements for cities and counties, adopt ch 178, Notice **ARC 1207B** ..... 12/26/01

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**TREASURER OF STATE[781]**

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**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

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**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  
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Adel, Iowa 50003

Senator John P. Kibbie  
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Representative Janet Metcalf  
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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
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#### EDUCATIONAL EXAMINERS BOARD[282]

Issuance of temporary permit to applicants upon completion of application and Praxis II examination, 14.101(3) IAB 12/12/01 <b>ARC 1181B</b>	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	January 8, 2002 1 p.m.
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#### EDUCATION DEPARTMENT[281]

Conservation education program, 68.1 to 68.4, 68.6, 68.8 to 68.11 IAB 12/26/01 <b>ARC 1194B</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	January 15, 2002 10 a.m.
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#### ELDER AFFAIRS DEPARTMENT[321]

Assisted living programs serving persons with dementia or cognitive impairment, 27.2(4), 27.3, 27.4(1), 27.5, 27.7(1) IAB 12/12/01 <b>ARC 1180B</b>	Room 316 Hotel Fort Des Moines Tenth and Walnut Des Moines, Iowa	January 3, 2002 10 a.m.
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#### ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 20.3(2), 22.1(1), 22.3(3), 22.100, 22.101(1), 22.201(2), 22.300, 23.1, 25.1 IAB 12/12/01 <b>ARC 1191B</b>	Conference Rooms 3 and 4 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 10, 2002 10:30 a.m.
Special waste authorizations, 102.15, ch 109 IAB 12/12/01 <b>ARC 1190B</b>	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 3, 2002 1 p.m.

#### HUMAN SERVICES DEPARTMENT[441]

New field operations service delivery structure, 1.4, 3.5(2) IAB 12/12/01 <b>ARC 1156B</b> (See also <b>ARC 1155B</b> )	Second Floor Conference Room 126 S. Kellogg St. Ames, Iowa	January 3, 2002 10 a.m.
	Sixth Floor Conference Room Suite 600, Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	January 3, 2002 10 a.m.
	Community Hall 205 S. Main St. Council Bluffs, Iowa	January 4, 2002 10 a.m.

**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Ave. Davenport, Iowa	January 4, 2002 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	January 3, 2002 10 a.m.
	Suite 410 Conference Room Nesler Center Town Clock Plaza Dubuque, Iowa	January 2, 2002 10 a.m.
	330 First Ave. N. Fort Dodge, Iowa	January 4, 2002 1:30 p.m.
	Fisher Community Center 709 S. Center St. Marshalltown, Iowa	January 3, 2002 1:30 p.m.
	Liberty Room, Mohawk Square 22 North Georgia Ave. Mason City, Iowa	January 4, 2002 10 a.m.
	Fourth Floor ICN Room 822 Douglas Sioux City, Iowa	January 2, 2002 1:30 p.m.
	Conference Room 201 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 3, 2002 10 a.m.
Accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities, ch 24 IAB 12/26/01 <b>ARC 1204B</b>	Conference Rooms 1 and 2 First Floor Hoover State Office Bldg. Des Moines, Iowa	January 18, 2002 10 a.m.
Food stamp benefits, 65.1 to 65.4, 65.8(9), 65.16, 65.19, 65.20, 65.21(3), 65.28(9), 65.37, 65.42, 65.45 IAB 12/26/01 <b>ARC 1202B</b>	Second Floor Conference Room 126 S. Kellogg St. Ames, Iowa	January 16, 2002 10 a.m.
	Seventh Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	January 16, 2002 9 a.m.
	Administrative Conference Room 417 E. Kaneshville Blvd. Council Bluffs, Iowa	January 16, 2002 9 a.m.
	Fifth Floor Conference Room Bicentennial Bldg. 428 Western Ave. Davenport, Iowa	January 16, 2002 10 a.m.

**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	January 16, 2002 10 a.m.
Conference Rooms A and B, 3rd Floor Nesler Center Town Clock Plaza Dubuque, Iowa	January 16, 2002 9 a.m.
330 First Ave. N Fort Dodge, Iowa	January 17, 2002 1:30 p.m.
First Floor Conference Room 206 W. State St. Marshalltown, Iowa	January 17, 2002 1 p.m.
Liberty Room, Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	January 16, 2002 10 a.m.
Suite 500 520 Nebraska St. Sioux City, Iowa	January 17, 2002 1:30 p.m.
Conference Rooms 213/215 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 16, 2002 10 a.m.

**MEDICAL EXAMINERS BOARD[653]**

Passing scores for SPEX and COMVEX-USA, 9.1, 11.1 IAB 11/28/01 <b>ARC 1151B</b>	Suite C 400 SW 8th St. Des Moines, Iowa	January 2, 2002 2:45 p.m.
Impaired physician review committee, 14.1 to 14.10 IAB 11/28/01 <b>ARC 1153B</b>	Suite C 400 SW 8th St. Des Moines, Iowa	January 2, 2002 3 p.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Psychologists—mandatory training for identifying and reporting child and dependent adult abuse, 240.1, 240.11(2) IAB 12/12/01 <b>ARC 1168B</b>	Professional Licensure Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 2, 2002 9 to 11 a.m.
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**STATE PUBLIC DEFENDER[493]**

Administration; confidentiality of attorney work product; personally identifiable information; waivers; definitions; eligibility guidelines for court-appointed counsel; attorney fee contracts; claims for indigent defense services, amend chs 1, 2, 4; adopt chs 6, 7, 10, 11, 12; rescind ch 13 IAB 12/26/01 <b>ARC 1209B</b>	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	January 18, 2002 10 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Project cost reporting requirements for cities and counties, ch 178 IAB 12/26/01 <b>ARC 1207B</b>	Engineering Conference Room 800 Lincoln Way Ames, Iowa	January 17, 2002 1 p.m. (If requested)
Application for license; license issuance; sanctions, 601.1, 605.12, 605.26, 615.37, 615.38 IAB 12/26/01 <b>ARC 1197B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	January 17, 2002 10 a.m. (If requested)

**UTILITIES DIVISION[199]**

Rights and remedies for gas and electric customers, 19.4, 20.4 IAB 12/12/01 <b>ARC 1187B</b> (See also <b>ARC 0991B</b> , IAB 10/3/01)	Hearing Room 350 Maple St. Des Moines, Iowa	January 23, 2002 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CITIZENS' AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

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

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

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 for[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 1211B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****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 159.5(11) and 203C.5, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, "State Licensed Warehouses and Warehouse Operators," Iowa Administrative Code.

This proposed amendment to rule 90.12(203C) eliminates the requirement that warehouse operators file with the Grain Warehouse Bureau the Department's copy (pink copy) of the warehouse receipt. Due to layoffs within the Department, the Bureau does not have time or staff to enter the information from warehouse receipts and file the thousands of warehouse receipts that the Bureau receives from licensed warehouse operators.

Any interested persons may make written comments or suggestions concerning this proposed amendment on or before 4:30 p.m. on January 15, 2002. Such written materials should be directed to Donna Gwinn, Bureau Chief, Grain Warehouse Bureau, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515) 281-6800. E-mail may be sent to [Donna.Gwinn@idals.state.ia.us](mailto:Donna.Gwinn@idals.state.ia.us).

No waiver provision is included in this amendment because an existing rule allows for waivers in appropriate cases. That waiver rule applies to the amendment proposed in this filing.

This proposed amendment is being simultaneously Adopted and Filed Emergency and is published herein as **ARC 1212B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 203C.16, 203C.17, 203C.18, 203C.34 and 203C.35.

**ARC 1194B****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 proposes to amend Chapter 68, "Conservation Education," Iowa Administrative Code.

These amendments update the Department's administration of the conservation education program established in Iowa Code section 256.34. These rules were last amended in

1991. A regulatory review of this chapter by the Conservation Education Board found that several areas in the chapter required updating.

A waiver provision is not included. The Department has adopted a uniform waiver rule.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 15, 2002. Written materials should be directed to Kathy McKee, Environmental Education Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, by fax to (515)281-4122 or by E-mail to [kathy.mckee@ed.state.ia.us](mailto:kathy.mckee@ed.state.ia.us). Persons who wish to convey their views orally should contact Kathy McKee by telephone at (515)281-3146.

Persons may also present their views either orally or in writing at a public hearing to be held on Friday, January 15, 2002, at 10 a.m. in the State Board Room, Grimes State Office Building, 400 East 14th Street and Grand Avenue, Des Moines, Iowa. Any person who plans to attend the public hearing and requires special accommodations for specific needs should contact Kathy McKee at (515)281-3146.

These amendments are intended to implement Iowa Code section 256.34.

The following amendments are proposed.

ITEM 1. Amend rule 281—68.1(256) as follows:

**281—68.1(256) Purpose.** The purpose of these rules is to define procedures for the administration of ~~the cost sharing~~ funds within the conservation education program board account for production and revision of conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The conservation education program shall serve Iowa citizens by providing effective ~~curriculum~~ *curricula*, program materials and educator stipends to increase environmental awareness, ~~and enhance understanding of environmental problems, and promote the resolution of environmental issues~~ *stewardship and natural resources*. Expenditure of funds from the conservation education program board account shall be in accordance with this policy.

ITEM 2. Amend rule 281—68.2(256) as follows:

**281—68.2(256) Conservation education program policy.** The conservation education program board shall constitute a long-term integrated effort to support ~~funding of conservation education materials and to provide stipends to Iowa educators who participate in innovative conservation education programs~~ *conservation education for Iowa educators and students. To support this policy, the board may establish guidelines to direct applicants to priority areas for funding and shall give preference to grants that meet these guidelines. The board may provide funding for activities that expand the impact of the project and provide accessibility for widespread adoption of programs for implementation by others. The board may provide funding for tracking of project implementation and evaluation.*

ITEM 3. Amend rule 281—68.3(256) as follows:

**281—68.3(256) Conservation education board.** A conservation education program board is created in the department. The board shall have ~~three~~ *five* members appointed as follows:

1. One member appointed by the director of the department of education.
2. One member appointed by the director of the department of natural resources.

## EDUCATION DEPARTMENT[281](cont'd)

3. One member appointed by the president of the Iowa association of county conservation boards.

4. *One member appointed by Iowa association of naturalists.*

5. *One member appointed by the Iowa conservation education council.*

ITEM 4. Amend the following definitions in rule **281—68.4(256)**:

“Board” means REAP conservation education program board.

“Conservation education programs (CEP)” means programs developed for formal (K-12 students), informal (preschool, adult and continuing education) and higher education (postsecondary and adult) programs, developed with consideration of, but not limited to, environmental education priorities established at the Governor’s Environmental Education Conference January 12 and 13, 1990. The “Governor’s Environmental Education Priorities for the 90’s” is available through the Bureau of Instruction and Curriculum, Department of Education, Grimes State Office Building, Des Moines, Iowa. Also “conservation education programs” means the lifelong education process dealing with people’s relationships with each other and with their natural and altered surroundings and includes the relation of population, pollution, resource allocation and depletion, conservation, transportation, technology and planning to the total human environment within the subject areas of natural resource conservation and environmental protection.

“Educator” is defined as means any person who teaches environmental/conservation education as a result of this training or experience and as part of an occupation or volunteer service. This may apply to certified teachers, governmental or private naturalists or education specialists, or others so determined by the board.

“Environmental/conservation education materials” is defined as a holistic approach to the educational process that incorporates the principles of carrying capacity, sustainability, interdependence, diversity, change, adaptation, competition/cooperation, cycles and energy flow. Environmental/conservation education materials promote numerous skills including critical thinking, problem solving, analysis, clarification, communication, observation, measuring, listing, mapping, predicting, computing, writing, reading, estimating and applying knowledge and skills, including critical thinking, problem solving, analysis, clarification, communication, observation, measuring, listing, mapping, predicting, computing, writing, reading, estimating, and applying knowledge and skills. *means materials that are developed or produced that provide knowledge, skills, processes and strategies that enhance Iowa citizens’ understanding of natural resources conservation and environmental issues.*

“Stipends for Iowa educators who participate in innovative conservation education programs” means may include tuition cost, acceptable food and lodging costs, substitute teacher costs, mileage expenses and or stipends separate allowances when applicable for educators to attend board-approved environmental/conservation education workshops, in-service programs and conferences, and other costs as approved by the board.

ITEM 5. Amend subrule 68.6(2) as follows:

**68.6(2)** Applications shall be made in sufficient detail as to clearly describe the scope of the project including the following:

- a. No change.
- b. Project summary and demonstration of need.

c. No change.

d. ~~Any documentation~~ Documentation of assurances and letters of ~~from~~ community support, including cooperating agencies.

e. to g. No change.

Any application which is not complete at the time of project review and scoring, or for which additional pertinent information has been requested and not received, shall not be considered for funding. Proposals not containing the specified information or not received by the specified date may not be considered. All applications shall be submitted in accordance with instructions in the requests for proposals the specified submittal deadline shall not be considered for funding. The proposals shall be submitted to the department.

ITEM 6. Amend subrule 68.6(3) as follows:

**68.6(3)** Applications shall be postmarked on or before the April 1, 1990, deadline for FY90 grants, and May 15 and November 1 for subsequent fiscal years in which funds are provided. Upon arrival, the proposals proposal will be reviewed to determine whether all required materials have been included and whether the proposal falls within the department of education’s guidelines. Failure to meet these criteria will result in disqualification of the proposal.

ITEM 7. Rescind rule 281—68.8(256) and adopt the following new rule in lieu thereof:

**281—68.8(256) Criteria.** Preference will be given, in formal and informal education programs, to materials capable of being infused in multiple curricular areas. Also, preference will be given to projects that encourage conservation stewardship. Proposals shall include but not be limited to the following information:

**68.8(1)** Statement of need. This part of the proposal identifies the target audience and describes how this audience will be served. The statement of need contains evidence or research that a need for such a project exists, explains how stated needs relate to REAP/CEP priorities and guidelines, and shows interdisciplinary components.

**68.8(2)** Goals, objectives, activities. This part of the proposal describes how the project will address the environmental education goals identified by the writer, how workable or appropriate the project is to the audience, and activity timelines. This part also describes how the project incorporates collaboration and networking, the potential of the project to be implemented elsewhere, and how the project demonstrates innovative and creative ideas and strategies.

**68.8(3)** Funding and budget considerations. This part of the proposal describes a realistic and cost-effective budget, shows ratio of total budget to number of people directly served, and shows that the project budget meets expense eligibility stated in subrule 68.9(6).

**68.8(4)** Evaluation. This part of the proposal describes evaluation tools that show how well the project’s goals and objectives have been met and how well the audience meets objectives. This part identifies strategies, milestones and tools that will be used to monitor the project, describes how monitoring will be used to strengthen the project, and how information will be disseminated.

ITEM 8. Amend subrule 68.9(1) as follows:

**68.9(1)** Timely completion of projects. Grants are expected to be completed in a 12-month time period; however, up to 18 months will be considered for board approval for grants difficult to accomplish in 12 months. *The board may consider extending the time period of a grant upon request.*

ITEM 9. Amend subrule 68.9(2) as follows:



## EDUCATION DEPARTMENT[281](cont'd)

**68.9(2)** Record keeping and retention. Grant recipients shall keep adequate records relating to the administration of a project, particularly relating to all incurred expenses. These records shall be available for audit by representatives of the department and the state auditor's office. All records shall be retained in accordance with state laws.

ITEM 10. Amend subrule 68.9(3) as follows:

**68.9(3)** ~~Quarterly~~ Midterm and final reports. Grantees shall provide ~~quarterly~~ *midterm and final* reports that include information detailing progress toward goals and objectives, expenditures, and services ~~provided~~ on forms provided for those reports. The report shall clearly identify the status of fundraising relevant to the approved projects and identify problems that may cause a delay in completing the project within the approved project period. Failure to submit reports by the due date shall result in suspension of financial payments to the grantee until the time that the report is received. Grants are considered active until the board notifies the grantee that the grant has been terminated or completed by the terms of the grant. At the completion of the project and prior to the final payment, a final written report shall be submitted by the grantee to the board. *The final 10 percent payment shall be withheld pending this report, which shall include a 75-word to 100-word summary of project results. This summary will be posted on the state environmental education Web site.* No new awards shall be made for continuation programs where there are delinquent reports from prior grants.

ITEM 11. Amend subrule 68.9(6) as follows:

**68.9(6)** Restrictions. Funds allocated under this chapter shall not be used for *out-of-state travel or equipment*, such as typewriters, computers, and hardware, or for construction, renovation or remodeling costs *unless specifically approved by the board*.

ITEM 12. Amend rule 281—68.10(256) as follows:

**281—68.10(256) Board review and approval.** The board or its designee shall review ~~score~~, and rank projects for funding, and funds shall be awarded on a competitive basis. If delegated, the reviewing, ~~scoring~~ and ranking of projects will be presented to the board as recommendations. The board may approve or ~~disapprove~~ *deny* funding for any project or part thereof. ~~Reasons for rejection of any recommended project or any part thereof shall be included in the motion to approve, modify, or reject any project.~~

~~**68.10(1)** Fiscal year 1990 funding. Grants approved on or before May 15, 1990, shall be permitted to continue through June 30, 1991, if requested by the grantee and approved by the board. Up to 50 percent of the grant funds requested shall be paid on or near May 15, 1990. Up to 40 percent shall be committed by the department by June 30, 1990, and the balance shall be payable at the successful completion of the grant as outlined in 281—68.9(256). FY90 grants shall be completed on or before June 30, 1991.~~

**68.10(2 I)** ~~In each year following FY90 that funds~~ Funds are made available by the Iowa legislature, ~~payments.~~ *Payments* shall be as follows:

a. For grant periods in excess of 90 days, up to 50 percent shall be paid at the beginning of the grant period, up to 40 percent at the midpoint of the grant period, and the balance at successful completion as determined by the board.

b. For grant periods of fewer than 90 days, 75 percent shall be paid at the beginning of the grant period and the balance at successful completion as determined by the board.

**68.10(3 2)** The board shall notify successful applicants and shall provide to each of them a contract for signature. This contract shall be signed by an official with authority to bind the applicant and shall be returned to the department prior to the award of any funds under this program.

ITEM 13. Amend rule 281—68.11(256) as follows:

**281—68.11(256) Waivers of retroactivity.** Normally, grant program developments completed prior to application scoring will not be approved. However, an applicant may make written request for a waiver of retroactivity to allow project elements to be considered for grant assistance. Waivers will be granted in writing by the board. ~~and receipt~~ *Receipt* of a waiver does not ensure funding, but only ensures that the project will be considered for funding along with all other applications. ~~Waiver of retroactivity provisions will be assumed to exist for any project initiated after July 1, 1989, until the first cycle of application scoring and grant allocations has been completed. For subsequent cycles, waivers must be requested and issued in writing prior to July 1, 1990.~~

ARC 1204B

## 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 225C.6, the Department of Human Services proposes to rescind Chapter 24, “Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities,” Iowa Administrative Code, and to adopt a new Chapter 24 with the same title.

This new chapter rewrites policy governing accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities to clarify the accreditation process, make the appeal process consistent with the process used by the rest of the Department, and revise the method of deciding the term of accreditation of an organization. Specifically, these new rules:

- Add and revise definitions to more clearly define language in the standards. The person served is now referred to as an “individual” instead of “consumer” to coincide with the most current accepted practice. Definitions of “goal achieving,” “goal keeping,” “readiness assessment,” and “readiness development” relating to intensive psychiatric rehabilitative services are added to clearly show how this chapter is based on the model developed by the Boston Center for Psychiatric Rehabilitation. A definition is added for “new organization” and the definition of “organization” is revised to clearly indicate which providers come under this chapter.

- Add requirements for reporting and tracking incident reports to set up a total quality improvement system for community-based placements to help ensure safety of the individuals served and to bring Iowa into compliance with federal regulations.

- More clearly define the survey process. Organizations will be required to submit any documentation relevant

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to a survey to the survey team before the close of the on-site review.

- Move the standards for organization of service systems and consumer rights from standards for organizational activities to standards for services. These standards are reviewed using the files of the individuals served. The indicators remaining under the standards for organizational activities will either be found in or out of compliance depending on whether there is documentation to show the indicator has been implemented.

- Revise standards for services as follows:
  - Require verification of a service description to be in the individual's file.

- Reorder the steps to developing a performance improvement system.

- Add guidelines for electronic files.
- More clearly define what needs to be present in the personnel files of the organization.

- Require handling of medications to meet state and federal regulations.

- Add a clearer description of what needs to be included in a social history, assessment, and service plan.

- Require documentation of the individual's treatment for emergency services to be contained in the narrative.

- Add case management requirements for quarterly face-to-face meetings, annual documentation of the need for case management, an average caseload of 45, and quarterly reviews to match the state plan and federal requirements.

- Revise the subrule on intense psychiatric rehabilitation to more clearly define the components required in the Boston Psychiatric Rehabilitation Model.

- Require supported community living to include provisions for skill training.

- Require emergency services to be documented in a narrative format and coordination of contacts to be made with relevant professionals.

- Clarify the application process and approval process for deemed status.

- Revise the policies governing the period of accreditation to provide that the term of accreditation is now determined by counting a percentage of all applicable performance indicators found to be in compliance in each of the three major sections using 15 percent of the total from policies and procedures, 15 percent of the total from organizational activities, and 70 percent of the total from specific services.

- Require an organization whose accreditation has been denied or revoked to wait at least six months from the notice of decision before it can apply as a new provider.

- Provide that when an organization is deemed, it will no longer be required to be responsible for meeting all requirements under this chapter. The organization will be held to the corrective action plan of the national accrediting body or the HCBS certification report. The organization shall also be required to meet the requirements for incident reports and the complaint process.

These rules do not provide for waivers of accreditation standards because organizations may request a waiver of these requirements under the Department's general rule on exceptions at rule 441—1.8(17A,217).

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

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

Des Moines – January 18, 2002  
Hoover State Office Building  
First Floor, Conference Rooms 1 and 2  
1305 East Walnut  
Des Moines, Iowa 50309

10 a.m.

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

These rules are intended to implement Iowa Code chapter 225C.

The following amendment is proposed.

Rescind **441—Chapter 24** and adopt the following **new 441—Chapter 24** in lieu thereof:

CHAPTER 24  
ACCREDITATION OF PROVIDERS OF SERVICES  
TO PERSONS WITH MENTAL ILLNESS,  
MENTAL RETARDATION, AND  
DEVELOPMENTAL DISABILITIES

PREAMBLE

The mental health and developmental disabilities commission has established this set of standards to be met by all providers of services to persons with mental illness, mental retardation, and developmental disabilities that are not required to be licensed by the department of inspections and appeals and that are required to meet specific standards for the organizations and services under the authority of the commission.

The mental health and developmental disabilities commission has established this set of standards to be met by community mental health centers, mental health services providers, case management providers and supported community living providers in accordance with Iowa Code chapter 225C. The commission's intent is to establish standards that are based on the principles of quality improvement, that are designed to facilitate the provision of excellent quality services that lead to positive outcomes, that make organizations providing services responsible for effecting efficient and effective management and operational systems that enhance the involvement of individuals and that establish a best practices level of performance by which to measure provider organizations. The standards are to serve as the foundation of a performance-based review of those organizations for which the commission holds accreditation responsibility as set forth in Iowa Code chapters 225C and 230A.

The mission of accreditation is to assure individuals and the general public of organizational accountability for meeting best practices performance levels, for efficient and effective management and for the provision of quality services that result in quality outcomes for individuals.

**441—24.1(225C) Definitions.**

“Accreditation” means the decision made by the commission that the organization has met the applicable standards.

“Advanced registered nurse practitioner” means a nurse with current licensure as a registered nurse in Iowa or who is licensed in another state and recognized for licensure in this state pursuant to Iowa Code chapter 152E and who is also registered in Iowa to practice in an advanced role.

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“Advisory board” means the board that reviews and makes recommendations to the organization’s board of directors on the program being accredited. The advisory board shall meet at least three times a year and shall have at least three members, at least 51 percent of whom are not providers. The advisory board shall include representatives who have disabilities or family members of persons with disabilities. The advisory board’s duties include review and recommendation of policies, development and review of the organization plan for the program being accredited, review and recommendation of the budget for the program being accredited, and review and recommendation of the total quality improvement program of the program being accredited.

“Anticipated discharge plan” means the statement of the condition or circumstances by which the individual would no longer need each of the specific services accredited under this chapter.

“Appropriate” means the degree to which the services or supports or activities provided or undertaken by the organization are suitable and desirable for the individual’s needs, situation, or problems.

“Assessment” means the review of the individual’s current functioning in regard to the individual’s situation, needs, strengths, abilities, desires and goals.

“Benchmarks” are defined as processes of an organization that lead to implementation of the indicators.

“Board of directors” means the board that provides oversight, guidance, and policy direction for the operation of the program being accredited. The board shall have at least three members. Organization staff shall not constitute the majority of members of the board.

“Case management services” means those services established pursuant to Iowa Code chapter 225C.

“Chronic mental illness” means the condition present in persons aged 18 and over who have a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment. Persons with chronic mental illness typically meet at least one of the following criteria:

1. Have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization or inpatient hospitalization).
2. Have experienced at least one episode of continuous, structured, supportive residential care other than hospitalization.

In addition, these persons typically meet at least two of the following criteria, on a continuing or intermittent basis, for at least two years:

- Are unemployed or employed in a sheltered setting or have markedly limited skills and a poor work history.
- Require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.
- Show severe inability to establish or maintain a personal social support system.
- Require help in basic living skills.
- Exhibit inappropriate social behavior that results in demand for intervention by the mental health or judicial system.

In atypical instances, a person who varies from the above criteria could still be considered to be a person with chronic mental illness.

“Commission” means the mental health and developmental disabilities commission (MH/DD commission) as established and defined in Iowa Code chapter 225C.

“Community” means a natural setting where individuals live, learn, work, and socialize.

“Community mental health center” means an organization providing mental health services that is established pursuant to Iowa Code chapters 225C and 230A.

“Consultation services” means case, program and community levels of professional assistance and information to increase the skill level and effectiveness of services being provided by other service organizations or groups.

“Credentialed staff” or “staff who have been credentialed” means staff who have completed the organization credential verification process.

“Credential verification process” means the process used by the organization to verify the qualifications of education, training and experience required for each staff position, and the procedures for verifying that staff assigned to the positions meet those qualifications.

“Crisis intervention plan” means a personalized, individualized plan developed with the individual that identifies potential personal psychiatric, environmental and medical emergencies. This plan shall also include those life situations identified as problematic and the identified strategies and natural supports developed with the individual to enable the individual to self-manage, alleviate or end the crises. This plan shall also include how the individual can access emergency services that may be needed.

“Deemed status” means acceptance by the commission of accreditation or licensure of a program or service by another accrediting body in lieu of accreditation based on review and evaluation by the division.

“Department” means the Iowa department of human services.

“Developmental disability” means a severe, chronic disability of an individual that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
2. Is manifested before the individual attains the age of 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and
5. Reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

An individual from birth to the age of nine, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting three or more of the criteria described above if the individual, without services and supports, has a high probability of meeting those criteria later in life.

“Direct services” means services involving direct interaction with an individual such as transporting an individual or providing therapy, habilitation, or rehabilitation activities.

“Division” means the division of mental health and developmental disabilities of the department of human services.

“Doctor of medicine or osteopathic medicine” means a person who is licensed in the state of Iowa under Iowa Code

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chapter 148 as a physician and surgeon or under Iowa Code chapter 150A as an osteopathic physician and surgeon.

“Education services” means professional information, training, assistance, and referral services provided to the general public, individual persons and to organizations about mental illness and mental health, the promotion of prevention services, and skill training for organizations.

“Functional assessment” means the task analysis of daily living skills. The functional assessment also takes into consideration an individual’s strengths, stated needs and level and kind of disability.

“Goal achieving” means to gain the required skills and supports to obtain the goal of choice. For purposes of this chapter, the definition and explanation are taken from the Psychiatric Rehabilitation Practitioner Tools as developed by the Boston Center for Psychiatric Rehabilitation.

“Goal keeping” means assisting the individual in maintaining successful and satisfying role performance to prevent the emergence of symptoms associated with role deterioration. For purposes of this chapter, the definition and explanation are taken from the Psychiatric Rehabilitation Practitioner Tools as developed by the Boston Center for Psychiatric Rehabilitation.

“Human services field” means a post-high school course of study resulting in a degree from an accredited four-year college in a field of study which includes, but is not limited to, psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

“Incident” means an occurrence which includes personal injury or illness requiring treatment or admission to a hospital or other inpatient facility, injury to staff or to others that requires emergency treatment or admission to a hospital or to another inpatient facility, and medication errors.

“Indicators” means conditions that will exist when the activity is done competently and benchmarks are achieved. Indicators also provide a means to assess the activity’s effect on outcomes of services.

“Individual,” for the purposes of this chapter, means a person who uses the services of the organization.

“Informed consent” refers to time-limited, voluntary consent. The individual or legal guardian may withdraw consent at any time without risk of punitive action. Informed consent includes a description of the treatment and specific procedures to be followed, the intended outcome or anticipated benefits, the rationale for use, the risks of use and nonuse, and the less restrictive alternatives considered. The individual or legal guardian has the opportunity to ask and have questions satisfactorily answered.

“Intensive psychiatric rehabilitation services” means services designed to restore, improve, or maximize level of functioning, self-care, responsibility, independence, and quality of life and to minimize impairments, disabilities, and disadvantages of persons with a disabling mental illness. Services focus on improving personal capabilities while reducing the harmful effects of psychiatric disability, resulting in an individual’s recovering the ability to perform a valued role in society.

“Leadership” means the governing board, the chief administrative officer or executive director, managers, supervisors, and clinical leaders who participate in developing and implementing organizational policies, plans and systems.

“Marital and family therapist” means a person who is licensed under Iowa Code chapter 154D in the application of counseling techniques in the assessment and resolution of emotional conditions. This includes the alteration and estab-

lishment of attitudes and patterns of interaction relative to marriage, family life, and interpersonal relationships.

“Mental health counselor” means a person who is licensed under Iowa Code chapter 154D in counseling services involving assessment, referral, consultation, and the application of counseling, human development principles, learning theory, group dynamics, and the etiology of maladjustment and dysfunctional behavior to individuals, families, and groups.

“Mental health professional” means a person who meets all of the following conditions:

1. Holds at least a master’s degree in a mental health field, including, but not limited to, psychology, counseling and guidance, psychiatric nursing and social work; or is a doctor of medicine or osteopathic medicine; and

2. Holds a current Iowa license when required by the Iowa professional licensure laws; and

3. Has at least two years of postdegree experience supervised by a mental health professional in assessing mental health problems, mental illness and needs of persons and in providing appropriate mental health services for those persons.

“Mental health service provider” means an organization whose services are established to specifically address mental health services to individuals or the administration of facilities in which these services are provided. Organizations included are those contracting with a county board of supervisors to provide mental health services in lieu of that county’s affiliation with a community mental health center (Iowa Code chapter 230A) and those that may contract with a county board of supervisors for special services to the general public or special segments of the general public and that are not accredited by any other accrediting body. These standards do not apply to individual practitioners or partnerships of practitioners covered under Iowa’s professional licensure laws.

“Mental retardation” means a diagnosis of mental retardation under these rules which shall be made only when the onset of the person’s condition was prior to the age of 18 years and shall be based on an assessment of the person’s intellectual functioning and level of adaptive skills. A psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person’s adaptive skills shall make the diagnosis. A diagnosis of mental retardation shall be made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association.

“Natural supports” means those services and supports an individual identifies as wanted or needed that are provided at no cost by family, friends, neighbors, and others in the community, or by organizations or entities that serve the general public.

“New organization” means an entity that has never been accredited under 441—Chapter 24 or an accredited entity under 441—Chapter 24 that makes a significant change in its ownership, structure, management, or service delivery.

“Organization” means:

1. A governmental entity or an entity that meets Iowa Code requirements for a business organization as a for-profit or not-for-profit business including, but not limited to, a business corporation under Iowa Code chapter 490 or a non-profit corporation under Iowa Code chapter 504A that provides a service accredited pursuant to the rules in this chapter.

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2. A county, consortium of counties, or the department of human services that provides or subcontracts for the provision of case management.

3. A division or unit of a larger entity, such as a unit within a hospital or parent organization.

"Organization" does not include: an individual for whom a license to engage in a profession is required under Iowa Code section 147.2, any person providing a service if the person is not organized as a corporation or other business entity recognized under Iowa Code, or an entity that provides only financial, administrative, or employment services and that does not directly provide the services accredited under this chapter.

"Outcome" means the result of the performance or non-performance of a function or process or activity.

"Policies" means the principles and statements of intent of the organization.

"Procedures" means the steps taken to implement the policies of the organization.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for the population of a specified geographic area or for special target populations.

"Psychiatric nurse" means a person who meets the requirements of a certified psychiatric nurse and is eligible for certification by the American Nursing Association and licensed by the state of Iowa to practice nursing as defined in Iowa Code chapter 152.

"Psychiatric rehabilitation practitioner" means a person who holds a graduate degree in rehabilitation counseling, mental health counseling, psychology, social work, nursing, or medicine and has at least two years' experience working in a psychiatric rehabilitation program or has at least 60 contact hours of training in psychiatric rehabilitation; or a person who holds a bachelor's degree in one of the above areas and has both at least two years of experience working in a psychiatric rehabilitation program and at least 60 contact hours of training in psychiatric rehabilitation.

"Psychiatrist" means a doctor of medicine or osteopathic medicine who is certified by the American Board of Psychiatry and Neurology or who is eligible for certification and who is fully licensed to practice medicine in the state of Iowa.

"Psychologist" means a person who is licensed to practice psychology in the state of Iowa, or who is certified by the Iowa department of education as a school psychologist, or is eligible for certification by the Iowa department of education, or meets the requirements of eligibility for a license to practice psychology in the state of Iowa as defined in Iowa Code chapter 154B.

"Qualified case managers and supervisors" means persons who have the following qualifications: (1) a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field and at least one year of experience in the delivery of services to the population groups the person is hired as a case manager or case management supervisor to serve, or (2) an Iowa license to practice as a registered nurse and at least three years of experience in the delivery of services to the population group the person is hired as a case manager or case management supervisor to serve. Persons employed as case management supervisors on or before August 1, 1993, who do not meet these requirements shall be considered to meet these requirements as long as they are continuously employed by the same case management provider.

"Qualified in a human-services field" means holding at least a bachelor's degree from an accredited four-year college with a major or at least 30 semester hours or its equivalent in human services. Fields of study which qualify as "human-service-related fields" include, but are not limited to: psychiatry, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy.

"Readiness assessment" means a process of involving the consumer in clarifying motivational readiness to participate in the recovery process. For purposes of this chapter the definition and explanation are taken from the Psychiatric Rehabilitation Practitioner Tools as developed by the Boston Center for Psychiatric Rehabilitation.

"Readiness development" means services designed to develop or increase a consumer's interest, motivation and resolve to engage in the rehabilitation services process, as a means of enhancing independent functioning and quality of life. For purposes of this chapter the definition and explanation are taken from the Psychiatric Rehabilitation Practitioner Tools as developed by the Boston Center for Psychiatric Rehabilitation.

"Registered nurse" means a person who is licensed to practice nursing in the state of Iowa as defined in Iowa Code chapter 152.

"Rehabilitation services" means services designed to restore, improve, or maximize the individual's optimal level of functioning, self-care, self-responsibility, independence and quality of life and to minimize impairments, disabilities and dysfunction caused by a serious and persistent mental or emotional disability.

"Rights restriction" means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and persons with whom the individual may share a residence.

"Service plan" means an individualized goal-oriented plan of services written in language understandable by the individual and developed for the individual by the individual and the organization.

"Staff" means persons paid by the organization to perform duties and responsibilities defined in the organization's policies and procedures.

"Supported community living services" means those services provided to individuals with a mental illness, mental retardation, or developmental disability to enable them to develop supports and learn skills that will allow them to live, learn, work and socialize in the community. These services include the provision of or arrangement for personal and environmental supports, the facilitation of the individual's identification and development of a natural support system, assistance and referral in meeting basic human needs, the provision of or arrangement for family and community support, and education, coordination and development of local support systems. These services are intended to be provided in the individual's home or other natural community environment where the skills are learned or used.

#### 441—24.2(225C) Standards for policy and procedures.

24.2(1) Performance benchmark. The organization has written policy direction for the organization and each service being accredited.

##### 24.2(2) Performance indicators.

a. The organization has a policies and procedures manual with policy guidelines and administrative procedures for all organizational activities and services specific to its orga-

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nization that addresses the standards in effect at the time of review.

b. The policies and procedures cover each benchmark and indicator in this chapter.

c. The policies and procedures manual is made available to all staff.

**441—24.3(225C) Standards for organizational activities.****24.3(1) Performance improvement system.**

a. Performance benchmark. The organization has a systematic, organizationwide, planned approach to designing, measuring, evaluating, and improving the level of its performance.

b. Performance indicators. The organization:

(1) Measures and assesses organizational activities and services accredited in this chapter annually.

(2) Gathers information from individuals, staff, and family members.

(3) Implements an internal review of individual records of those services accredited under this chapter.

(4) Reviews the organization's response to situations that may pose a danger or threat to staff or individuals for necessity, appropriateness, effectiveness and prevention.

(5) Identifies areas in need of improvement.

(6) Has a plan to address the areas in need of improvement.

(7) Implements the plan and documents the results.

**24.3(2) Leadership.**

a. Performance benchmark. Organization leaders provide the framework for the planning, designing, directing, coordination, provision and improvement of services that are responsive to the individuals and the community served by the organization.

b. Performance indicators.

(1) There are clearly articulated mission and values statements that are reflected in the long-range organizational plans and in organization policies.

(2) The annual and long-range budgeting process involves appropriate governing and managing levels of leadership and reflects the organization's mission and values. An independent auditor or other person as provided by law does an annual financial audit.

(3) The organization establishes a board of directors. The board has individuals or family members of an individual on the board or establishes and implements an advisory board.

(4) The organization's decision-making process, including policy decisions affecting the organization, reflects involvement of the various levels of leadership and responsiveness to staff.

(5) Organization leaders solicit input from leaders of the various community groups representing individuals served by the organization in designing responsive service delivery systems.

(6) The organization leaders develop and implement a service system appropriate to the needs of the individuals served by the organization.

(7) Organization leaders make educational information, resources, and service consultation available to community groups.

**24.3(3) Management information system.**

a. Performance benchmark. Information is obtained, managed and used in an efficient and effective method to document, enhance and improve organizational performance and service delivery to the individuals.

b. Performance indicators.

(1) The organization keeps mail, correspondence, and all data information, including individual records, in a secured

locked area. The organization keeps access to electronic files secure.

(2) The organization has a system to maintain, on a current basis, the organization, compilation, documentation, and maintenance of all individual-specific information related to the provision and outcomes of services and treatments provided to the individual.

**24.3(4) Human resources.**

a. Performance benchmark. The organization provides credentialed staff in order to support the organization's mission and facilitate the provision of quality services to individuals.

b. Performance indicators. The organization:

(1) Has a job description in the personnel file of each staff member that clearly defines responsibilities, distribution of duties, and qualifications. The organization establishes a credentialing review process to verify qualifications of staff including degrees, licenses, medication management training, and certification as required by the position.

(2) Evaluates staff and management annually. The annual evaluation includes a plan for staff development for each staff member.

(3) Provides training and education to all staff relevant to their position.

(4) Provides for training on child and dependent adult abuse reporter requirements to all organization staff. The organization documents in personnel records training on child and dependent adult abuse reporter requirements.

(5) Documents in the personnel file that organization staff are aware of the organization's policy on confidentiality and has the organization staff sign a document indicating that they are aware.

(6) Provides initial orientation to new organization staff.

(7) Has mechanisms in place that afford staff the right to express concerns about an individual care issue or to file a grievance concerning a specific employment situation.

(8) Completes a criminal and dependent adult abuse record check as required in Iowa Code section 135C.33(5) prior to employment for any employee who provides direct services to individuals in the individual's home.

(9) Does not employ a person if the department of human services determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of employment.

(10) Includes the following question in all applications for staff that provide direct services to individuals in the individual's home: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime in this state or any other state?"

(11) Establishes and implements a code of ethics for all staff and documents in the personnel records that the code of ethics in effect at the time of review has been reviewed with each staff member. The organization ensures that the following issues are addressed: confidentiality, individual rights, professional and legal issues and statutory obligations in providing services to individuals.

**24.3(5) Organizational environment.**

a. Performance benchmark. The organization provides services in an organizational environment that is safe and supportive for the individuals being served and the staff providing services.

b. Performance indicators.

(1) The environment enhances the self-image of the individual and preserves the individual's dignity, privacy, and self-development.



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(2) The environment is safe and accessible and meets all applicable local, state, and federal regulations.

(3) The processes that service and maintain the environment and the effectiveness of the environment are reviewed within the organization's monitoring and improvement system.

(4) The organization establishes intervention procedures for behavior that presents significant risk of harm to the individual or others. The interventions also ensure that the individual's rights are protected and that due process is afforded.

(5) The organization meets state and federal regulations in the way it implements the safe storage, provision, and administration of medication when used within the service.

**441—24.4(225C) Standards for services.** Providers shall meet the standards in subrules 24.4(1) through 24.4(8) for each specific service set forth in subrules 24.4(9) through 24.4(14) except for outpatient, emergency, and evaluation services. Providers of outpatient service shall meet indicators in subrules 24.4(1), 24.4(2), 24.4(4), 24.4(6), 24.4(7), and 24.4(8). Providers of emergency and evaluation services shall meet the benchmark for the services they provide.

**24.4(1) Social history.**

a. Performance benchmark. The organization completes a social history for each individual served.

b. Performance indicators.

(1) The organization collects and documents relevant historical information and organizes the information in one distinct document in a narrative format.

(2) Program staff write or review the social history and update it at least annually.

(3) The social history includes relevant information regarding the onset of disability of the individual served. The family, physical, psychosocial, behavioral, cultural, environmental and legal history is included.

**24.4(2) Assessment.**

a. Performance benchmark. The organization develops a written assessment for each individual served. The assessment is the basis for the services provided to the individuals.

b. Performance indicators.

(1) The assessment includes information about the individual's current situation, diagnosis, needs, problems, wants, abilities and desired results.

(2) Program staff develop and complete the assessment in a narrative format.

(3) Staff base decisions regarding level, type and immediacy of services to be provided, or need for further assessment or evaluation, upon the analysis of the information gathered in the assessment with the individual's involvement.

(4) Program staff solicit collateral provider information as appropriate to the individual situation in order to compile a comprehensive and full assessment.

(5) Program staff complete an annual reassessment for each individual and document the reassessment in a written format.

(6) Individuals with a diagnosis of chronic mental illness have this diagnosis supported by a psychiatric or psychological evaluation conducted by a qualified professional, and documentation of the diagnosis is contained in the individual's record.

(7) Documentation supporting the diagnoses of a developmental disability by professionals is in the individual's record.

(8) Individuals with a diagnosis of mental retardation have this diagnosis supported by a psychological evaluation

conducted by a qualified professional, and documentation of the diagnosis is contained in the individual's record.

**24.4(3) Individual service plan.**

a. Performance benchmark. Individualized, planned and appropriate services are guided by an individual-specific service plan developed in collaboration with the individual, significantly involved others as appropriate, and staff. Services are planned for and directed to where the individuals live, learn, work, and socialize.

b. Performance indicators.

(1) The service plan is based on the current assessment.

(2) The service plan identifies observable or measurable individual goals and action steps to meet the goals.

(3) The service plan includes interventions and supports needed to meet those goals with incremental action steps, as appropriate.

(4) The service plan includes the staff, persons, or organizations responsible for carrying out the interventions or supports.

(5) Services defined in the service plan are appropriate to the severity level of problems and specific needs or disabilities and are related to desired individual outcomes.

(6) The plan reflects individual desires and involves other organizations and persons as appropriate.

(7) The selection and wording of the goals and desired outcomes reflect the individual's wants, needs, and desires.

(8) Activities identified in the service plan encourage the individual's ability and right to make choices, to experience a sense of achievement, and to modify or continue the individual's participation in the treatment process.

(9) Staff monitor the service plan with review occurring regularly. At least annually, staff assess and revise the service plan to determine achievement, continued need or change in goals or intervention methods. The review includes the individual with the involvement of significant others as appropriate.

(10) Staff develop a separate, individualized, anticipated discharge plan as part of the individualized service plan that is specific to each service the individual receives.

(11) The service plan includes documentation of any rights restrictions, why there is a need for the restriction, and a plan to restore those rights or a reason why a plan is not necessary or appropriate.

**24.4(4) Documentation of service provision.**

a. Performance benchmark. Individualized and appropriate intervention services and treatments are provided in ways that support the needs, desires, and goals identified in the service plan, and that respect the individual's rights and choices.

b. Performance indicators.

(1) Staff document in the narrative the individual's participation in the treatment process.

(2) Responsible staff document the individual's progress toward goals, the provision of staff intervention, and the individual's response to those interventions.

(3) Documentation of service provision is in a written, legible, narrative format in accordance with organizational policies and procedures.

**24.4(5) Incident reports.** An incident is defined as an occurrence that includes personal injury or illness requiring treatment or admission to a hospital or other inpatient facility, injury to staff or to others that requires emergency treatment or admission to a hospital or to another inpatient facility, and medication errors.

a. Performance benchmark. The organization maintains an incident record report for incidents that occur or are iden-

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tified during times of direct contact by provider staff. Incidents include:

- (1) Events requiring a doctor's or nurse's care and skills.
- (2) Events requiring the services of a mental health professional other than services previously identified in the service plan.
- (3) The death of an individual.
- (4) Intervention of law enforcement.
- (5) Medication errors.
- (6) Lack of supervision by organizational staff that results in harm to individuals or others.
- (7) Physical harm to the individual served, staff, or others.
- (8) Any incident reported to protective services, the police or the department of inspections and appeals.
- (9) Admission of the individual to a domestic violence shelter.

b. Performance indicators.

(1) The organization has printed incident report forms available that include the following detailed information:

1. The name of the individual served.
2. A description of the incident.
3. The name of the provider where the incident occurred.
4. Names of all organization staff and others who were present at the time of the incident.
5. Action taken by the organization staff to handle the situation.
6. Resolution of the incident.
7. The date and time the incident occurred.

(2) When law enforcement is involved or summoned, there is documentation of the names of the law enforcement agents.

(3) The person in charge at the time of the incident prepares and signs the incident report.

(4) Staff file one copy of the completed incident report in the individual's file and maintain a copy in a central location.

(5) Staff send a copy of the incident report to the individual, the individual's legal guardian, appropriate medical personnel, and the individual's Medicaid targeted case manager or county case manager within 72 hours of the incident.

**24.4(6) Confidentiality and legal status.**

a. Performance benchmark. Staff release medical and mental health information only when properly authorized.

b. Performance indicators.

(1) The organization obtains written consent from the individual, the individual's legal guardian, or other persons authorized by law prior to the release of personal identifying information, medical records, mental health records, or any other confidential information.

(2) Staff complete releases in accordance with existing federal and state laws, rules, and regulations and maintain them in each individual file.

**24.4(7) Service systems.**

a. Performance benchmark. The organization develops a clear description of each of the services offered. The organization develops an admission and discharge system of services. Staff coordinate services with other settings and providers.

b. Performance indicators.

(1) The organization has established and documented the necessary admission information to determine the individual's eligibility for participation in the service.

(2) Staff include in the individual's file verification that a service description is provided to the individual and, when appropriate, family or significant others.

(3) Continuity of services occurs through coordination among the staff and professionals providing services to the individual. Coordination of services through linkages with other settings and providers has occurred, as appropriate.

(4) Staff include a written discharge summary in each individual record at the time of discharge.

**24.4(8) Respect for individual rights.**

a. Performance benchmark. Each individual is recognized and respected in the provision of services, in accordance with basic human, civil and statutory rights.

b. Performance indicators.

(1) Staff provide services in ways that respect and enhance the individual's sense of autonomy, privacy, dignity, self-esteem and involvement in the individual's own treatment. Staff take language barriers, cultural differences, and cognitive deficits into consideration and make provisions to facilitate meaningful individual participation.

(2) Staff inform individuals and, when appropriate, family and significant others of their rights, choices, and responsibilities.

(3) The organization has a procedure established to protect the individuals during any activities, procedure or research that requires informed consent.

(4) The organization verifies that the individual is informed of the process to express questions, concerns, complaints or grievances about any aspect of the individual's service.

(5) The organization provides the individuals and their guardians the right to appeal the application of policies, procedures, or any staff action that affects the individual. The organization has established written appeal procedures and a method to ensure that the procedures and appeal process are available to individuals.

(6) All individuals, their legal representatives, and other persons authorized by law have access to the records of the individual in accordance with state and federal laws and regulations.

**24.4(9) Providers of case management.**

a. Performance benchmark. Case management services link individuals to service agencies and support systems responsible for providing the necessary direct service activities, and coordinate and monitor those services.

b. Performance indicators.

(1) Staff clearly define the need for case management and document it annually.

(2) The team is composed of, at a minimum, the individual, the case manager, and providers or natural supports relevant to the individual's service needs. In addition the team may include family at the discretion of the individual.

(3) The team works with the individual to establish the service plan which guides and coordinates the delivery of the services.

(4) The case manager advocates for the individual.

(5) The case manager coordinates the services.

(6) Documentation of contacts includes date, name of individual, name of the case manager, and place of service. Individual face-to-face meetings with the individual are held at least quarterly.

(7) The case manager monitors the services.

(8) Case managers do not provide direct services.

(9) Individuals are linked to appropriate resources, which provide necessary direct services and natural supports.

(10) Individuals participate in developing an individualized crisis intervention plan that includes natural supports and self-help methods.



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(11) Documentation shows individual input on choosing goals.

(12) Documentation shows individuals are informed about their choice of providers as provided in the county management plan.

(13) Within an accredited case management program, the average caseload is no more than 45 individuals per each full-time case manager.

(14) The case manager communicates with the team and then documents in the individual's file a quarterly review of the individual's progress toward achieving the goals.

**24.4(10) Day treatment.** Day treatment is an individualized service emphasizing mental health treatment and intensive psychosocial rehabilitation activities designed to increase the individual's ability to function independently or facilitate transition from residential placement. Staff use individual and group treatment and rehabilitation services based on individual needs and identified behavioral or mental health issues.

a. Performance benchmark. Individuals who are experiencing a significantly reduced ability to function in the community are stabilized and improved by the receipt of psychosocial rehabilitation, mental health treatment services and in-home support services, and the need for residential or inpatient placement is alleviated.

b. Performance indicators.

(1) Individuals participate with the organizational staff in identifying the problem areas to be addressed and the goals to be achieved that are based on the individual's need for services.

(2) Individuals receive individualized services designed to focus on those identified mental health or behavioral issues that are causing the significant impairment in their day-to-day functioning.

(3) Individuals who receive intensive outpatient and day treatment services receive a comprehensive and integrated schedule of recognized individual and group treatment and rehabilitation services.

(4) Individuals and staff review their progress in resolving problems and achieving goals on a frequent and regular basis.

(5) Individuals receive services appropriate to defined needs and current risk factors.

(6) Individuals receive services from staff who are appropriately qualified and trained to provide the range and intensity of services required by the specific problems or disabilities of the individual. A mental health professional provides or directly supervises the provision of treatment services.

(7) Individuals participate in discharge planning which focuses on coordinating and integrating individual, family, and community and organization resources.

(8) Family members of individuals are involved in the planning and provision of services as appropriate and as desired by the individual.

**24.4(11) Intensive psychiatric rehabilitation services.** Intensive psychiatric rehabilitation services are individualized services designed to increase the individual's ability to recover valued roles in the community and to prevent or reduce the need for services in a hospital or residential setting.

a. Performance benchmark. Individuals who are experiencing a significantly reduced ability to function in the community due to a disability are stabilized and experience role recovery by the receipt of intensive psychiatric rehabilitation services.

b. Performance indicators.

(1) Individuals participate with the psychiatric rehabilitation practitioner in identifying the specific rehabilitation issues, developing environmental rehabilitation goals, and specifying service objectives or interventions. A service plan as specified in subrule 24.4(3) is required after the readiness assessment has been completed.

(2) Individuals receive individualized services designed to focus on those identified mental health needs, functional needs and support needs that contribute to the person's level of disability preventing their full participation in the life of the community.

(3) Whenever possible, intensive psychiatric rehabilitative services are provided in natural settings where individuals live, learn, work and socialize.

(4) Individuals and a psychiatric rehabilitation practitioner review the individual's progress in accomplishing rehabilitation objectives or interventions and attaining environmental rehabilitation goals on a frequent and regular basis.

(5) Individuals receive services appropriate to mutually determined disability-related challenges and current risk factors.

(6) Individuals receive services from staff who meet the requirements of a psychiatric practitioner. A mental health professional or psychiatric rehabilitation practitioner supervises the provision of psychiatric rehabilitation services.

(7) During goal keeping, individuals participate in discharge planning that focuses on coordinating and integrating individual, family, community and organization resources for successful community tenure and the anticipated end of psychiatric rehabilitation services.

(8) Significantly involved others are involved with the individual in the planning and provision of services as appropriate and as desired by the individual.

(9) Individuals receive four to ten hours per week of recognized psychiatric rehabilitation services. All services are provided for an identified period of time.

(10) Staff document changes in motivational readiness to choose valued roles and environments biweekly in each individual's file during readiness assessment or readiness development.

(11) Staff document skill acquisition and skill competency weekly in each individual's file during goal achieving or goal keeping.

(12) Staff document use of critical resources weekly in each individual's file during goal achieving or goal keeping.

(13) Staff document the achievement of chosen rehabilitation goals regularly in each individual's file during goal keeping.

(14) Staff document the level of individual satisfaction with services at least quarterly in each individual's file.

(15) Staff document satisfaction with chosen roles and environments regularly in each individual's file during goal keeping.

(16) Individuals achieve positive changes in environmental status such as moving to a more independent living arrangement, enrolling in an education program, getting a job, or joining a community group. Staff document this achievement regularly in each individual's file during goal keeping.

(17) Staff document the need for and use of psychiatric inpatient services quarterly in each individual's file.

**24.4(12) Supported community living services.** Supported community living services are those skill-training services and supports determined necessary to enable individuals with a mental illness, mental retardation, or a developmental disability to live, learn, work, and socialize in a

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community setting. Services are individualized, need- and abilities-focused, and organized according to the following components, which are to be provided by organizational staff or through linkages with other resources: outreach to appropriate support or treatment services; assistance and referral in meeting basic human needs; assistance in housing and living arrangements; crisis intervention and assistance; social and vocational assistance; support, assistance, and education to the individual's family and to the community; protection and advocacy; coordination and development of natural support systems; and service coordination. Services are directed to enhancing the individual's ability to regain or attain higher levels of independence, or to maximize current levels of functioning.

a. Performance benchmark. Individuals with disabilities live, learn, work, and socialize in the community.

b. Performance indicators.

(1) Individuals receive services within their home and community setting where the skills are learned or used.

(2) At intake the individuals participate in a functional assessment that includes a task analysis of daily living skills to assist in defining areas of service need and establishing a service plan. Staff summarize the findings of the functional assessment in a narrative that describes the individual's current level of functioning in the areas of living, learning, working, and socialization. Staff review functional assessments on a regular basis to determine progress.

(3) Individuals receive skill training and support services directed to enabling them to regain or attain higher levels of functioning or to maximize functioning in the current goal areas.

(4) Services are delivered on an individualized basis in the place where the individual lives or works. Supported community living is not part of an organized mental health support or treatment group, drop-in center, or clubhouse. Skill training groups can be one of the activities in the service plan and part of supported community living. They cannot stand alone as a supported community living service.

(5) Documentation that steps have been taken to encourage the use of natural supports and develop new ones is in the individual file.

(6) Individuals participate in developing a detailed individualized crisis intervention plan that includes natural supports and self-help methods.

**24.4(13)** Partial hospitalization services. Partial hospitalization services is an active treatment program providing intensive group and individual clinical services within a structured therapeutic environment for those individuals who are exhibiting psychiatric symptoms of sufficient severity to cause significant impairment in day-to-day functioning. Short-term outpatient crisis stabilization and rehabilitation services are provided to avert hospitalization or to transition from an acute care setting. Services are supervised and managed by a mental health professional, and psychiatric consultation is routinely available. Clinical services are provided by a mental health professional.

a. Performance benchmark. Individuals who are experiencing serious impairment in day-to-day functioning due to severe psychiatric distress are enabled to remain in their community living situation through the receipt of therapeutically intensive milieu services.

b. Performance indicators.

(1) Individuals and staff mutually develop an individualized service plan that focuses on the behavioral and mental health issues and problems identified at admission. Goals are based on the individual's need for services.

(2) Individuals receive clinical services that are provided and supervised by mental health professionals. A licensed and qualified psychiatrist provides psychiatric consultation and medication services.

(3) Individuals receive a comprehensive schedule of active, planned and integrated psychotherapeutic and rehabilitation services provided by qualified professional staff.

(4) Individuals receive group and individual treatment services that are designed to increase their ability to function independently.

(5) Individuals are involved in the development of an anticipated discharge plan that includes linkages to family, provider, and community resources and services.

(6) Individuals have sufficient staff available to ensure their safety, to be responsive to crisis or individual need, and to provide active treatment services.

(7) Individuals receive services commensurate with current identified risk and need factors.

(8) Support systems identified by individuals are involved in the planning and provision of services and treatments as appropriate and desired by the individual.

**24.4(14)** Outpatient psychotherapy and counseling services. Outpatient psychotherapy and counseling services are a dynamic process in which the therapist uses professional skills, knowledge and training to enable individuals to realize and mobilize their strengths and abilities, take charge of their lives, and resolve their issues and problems. Psychotherapy services may be individual, group, or family, and are provided by a person meeting the criteria of a mental health professional or by a person with a master's degree or an intern working on a master's degree in a mental health field who is directly supervised by a mental health professional.

a. Performance benchmark. Individuals realize and mobilize their own strengths and abilities to take control of their lives in the areas where they live, learn, work, and socialize.

b. Performance indicators.

(1) Individuals are prepared for their role as a partner in the therapeutic process at intake where they define their situation, evaluate those factors that affect their situation, and establish desired problem resolution.

(2) Psychiatric and psychopharmacological services are available as needed by the individual.

(3) Staff document current and future treatment goals and interventions and supports mutually agreed to by the individual and the therapist in the initial assessment and after each intervention and treatment service. A distinct service plan document is not required.

(4) Staff document the individual's status at each visit and the reasons for continuing or discontinuing of services in the progress notes. A distinct discharge summary document is not required.

(5) Individual records are subject to an internal quality assurance process and monitored by the organization. Quality assurance activities include:

1. A review of the individual's involvement in and with treatment.

2. Verification that treatment activities are documented and are relevant to the diagnosis or presenting problem.

3. Verification that the organization follows up on individuals who miss appointments.

**24.4(15)** Emergency services. Emergency services are crisis services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress, and are available and accessible, by telephone or face-to-face, to individuals on a 24-hour basis. The clinical assessment and psychotherapeutic services are provided

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by a person who has training in emergency services and who is a mental health professional or has access to a mental health professional at least by telephone. Services may be provided by a person who holds a master's degree in a mental health field including, but not limited to, psychology, counseling and guidance, psychiatric nursing, psychiatric rehabilitation, or social work; or a person who holds a bachelor's degree in a human service discipline and has five years' experience providing mental health services or human services; or a psychiatric nurse who has three years of clinical experience in mental health. A comprehensive social history is not required for this treatment.

a. Performance benchmark. Individuals receive, when needed, emergency services that provide a focused assessment and rapid stabilization of acute symptoms of mental illness or emotional distress.

b. Performance indicators.

(1) Individuals can access 24-hour emergency services by telephone or in person.

(2) Information about how to access emergency services is publicized to facilitate availability of services to individuals, family members, and the public.

(3) Individuals receive assessments and services from either a mental health professional or from personnel who meet the requirements above and are supervised by a mental health professional. Psychiatric consultation is available, if needed.

(4) Individuals receive intervention services commensurate with current identified risk factors.

(5) Significantly involved others of individuals are involved as necessary and appropriate to the situation and as desired by the individual.

(6) Individuals are involved in the development of post-emergency service planning and resource identification and coordination.

(7) Staff document contacts in a narrative format and maintain them in a central location that will allow timely response to the problems presented by the individual.

(8) Timely coordination of contacts is made with relevant professionals.

**24.4(16) Evaluation services.** Evaluation services are screening, diagnosis and assessment of individual and family functioning needs, abilities, and disabilities, and determining current status and functioning in the areas of living, learning, working, and socializing.

a. Performance benchmark. Individuals receive comprehensive evaluation services that include screening, diagnosis, and assessment of individual or family functioning, needs and disabilities.

b. Performance indicators.

(1) Individuals receive comprehensive evaluation services by a mental health professional that include screening, diagnosis, and assessment of individual or family functioning, needs, abilities, and disabilities.

(2) Evaluations consider the emotional, behavioral, cognitive, psychosocial, and physical information as appropriate and necessary.

(3) The evaluation includes recommendations for services, and need for further evaluations.

(4) Mental health evaluations are completed by a person who meets the criteria of a mental health professional, or a person with a master's degree who is license-eligible and supervised by a mental health professional, or an intern of a master's or doctorate program who is supervised by a mental health professional.

**441—24.5(225C) Accreditation.** The commission shall make all decisions involving issuance, denial, or revocation of accreditation. This accreditation shall delineate all categories of service the organization is accredited to provide. Although an organization may have more than one facility or service site, only one accreditation notice shall be issued to the organization for those services accredited by the commission except as provided in paragraph 24.5(2)<sup>d</sup>. Services that have deemed status according to the guidelines in this chapter shall have the accreditation period for the specific services coincide with the time period awarded by the national accrediting body or the certification for home- and community-based services.

**24.5(1) Organizations eligible for accreditation.** The commission accredits the following organizations:

a. Providers of case management.

b. Community mental health centers.

c. Providers of supported community living.

d. Providers of other mental health services.

**24.5(2) Performance outcome determinations.**

a. There are three major sections contained in these standards: policies and procedures, organizational activities, and services. The major sections are divided into standards, with performance benchmark and performance indicators for each standard. Each of the standards for the three sections (policy and procedures, organizational activities, and services) as set forth in rules 441—24.2(225C), 24.3(225C), and 24.4(225C) shall be reviewed.

b. A performance compliance level shall be determined based on the number of indicators found to be in compliance.

(1) There are four indicators for standards for policy and procedures. Each indicator has a value of 3.75 out of a possible score of 15.

(2) There are 32 indicators for standards for organizational activities. Each indicator has a value of .47 out of a possible score of 15.

(3) Quality assurance staff shall determine a score for each service to be accredited. If 25 percent or more of the files reviewed do not comply with the requirements for a performance indicator, then that indicator is considered out of compliance and corrective action is required. Quality assurance staff shall determine the score for each service by dividing the number of indicators in compliance by the total number of indicators applicable for that service.

c. In order for a total overall rating to be established, the performance rating for policy and procedures shall be counted as 15 percent of the total, organizational activities as 15 percent of the total, and services as 70 percent of the total.

d. When the commission accredits an organization for more than one service under this chapter, staff will conduct one survey for the organization. There shall be one accreditation award for all the services that the commission accredits based upon the lowest score of the services surveyed. Services that have deemed status will have a term of accreditation that coincides with the term of certification granted by the home- and community-based waiver or the accreditation granted by the national accrediting agency. At the time of the recertification visit, staff shall review the services that did not receive three-year accreditation. New or add-on services that meet the requirements for accreditation shall receive an initial 270-day accreditation for that individual service. The term of accreditation shall be determined individually. At the time of recertification of the new add-on service, recommendation may be made to coincide with the term of accreditation for the other services of that organization that are accredited by the commission.

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e. An organization whose accreditation has been denied or revoked shall not be approved for any service for at least six months from the notice of decision denying or revoking accreditation. When an organization subcontracts with agencies to provide services, on-site reviews shall determine if each agency meets all the requirements in this chapter. When an organization subcontracts with agencies to provide services, on-site reviews shall determine if each agency meets all the requirements in this chapter.

f. When an organization subcontracts with more than one agency, the length of accreditation shall be determined individually. On-site visits are done at each subcontracting agency with accreditation issued to the organization.

g. Organizations that have received an initial 270-day accreditation and have not provided services to individuals pursuant to that accreditation by the end of the 270 days shall have their accreditation lapse for that specific service. New applications may be submitted that include the waiting list of consumers to be served along with specific timelines of when the services will begin. This lapse of accreditation shall not be considered a denial.

**24.5(3) Accreditation decisions.**

a. Initial 270-day accreditation. This type of accreditation is granted to a new organization, or an organization not previously accredited by the division. Staff may conduct a desk audit or on-site visit to review the organization's mission, policies, procedures, staff credentials, and program descriptions.

b. Add-on service accreditation. An organization in good standing may initially apply for an add-on service. When the on-site review of the add-on service results in a score comparable to the overall organization's score at the time of the most recent accreditation, the organization shall have the add-on accreditation date coincide with the overall accreditation date of the organization. In the event the add-on service site review results in a lower score and lower accreditation decision, division staff shall conduct another on-site review for that add-on service when the add-on service accreditation expires.

c. Three-year accreditation. An organization or service is eligible for this type of accreditation if it has achieved an 80 percent or higher percent average performance compliance level. The organization may be required to develop and submit a plan of corrective action and improvement that may be monitored either by written report or an on-site review.

d. One-year accreditation. An organization is eligible for this type of accreditation when multiple and substantial deficiencies exist in specific areas causing compliance levels with performance benchmarks and indicators to fall between the averages of 70 percent to 79 percent, or when previously required corrective action plans have not been implemented or completed. The organization must submit a corrective action plan to correct and improve specific deficiencies and overall levels of functioning. Quality assurance staff shall monitor this plan through on-site reviews, written reports and the provision of technical assistance.

e. Probational 180-day accreditation. An organization is eligible for this type of accreditation in lieu of denial when the overall compliance level is from 60 to 69 percent, and pervasive and serious deficiencies exist; or when previously required corrective action plans as a result of a one-year accreditation have not been implemented or completed. All deficiencies must be corrected by the time of the follow-up on-site survey at the conclusion of the provisional time period. After this survey the organization shall meet the stan-

dards for accreditation for a one-year accreditation, or the commission shall deny accreditation. The commission may downgrade organizations with a one- or three-year accreditation to the probational 180-day accreditation when one or more complaints are founded.

f. Denial of accreditation.

(1) Accreditation shall be denied when there are pervasive and serious deficiencies that put individuals at immediate risk or when the overall compliance level falls to 59 percent or below. Under such circumstances no corrective action report shall be required. An emergency commission meeting may be called to consider denial or revocation of accreditation.

(2) The commission shall issue a notice of decision to deny accreditation to the organization. If the organization disagrees with any action or failure to act in regard to that notice, the organization has the right to appeal according to 441—Chapter 7.

(3) When one or more complaints are received, quality assurance staff shall complete an investigation and submit a report to the commission. If any of the complaints are substantiated and the commission determines there is a pervasive or serious deficiency, the commission may deny accreditation.

(4) If the commission votes to deny accreditation, the commission shall issue a notice of decision to the organization. If the organization disagrees with any action of the commission, the organization has the right to appeal according to 441—Chapter 7.

**24.5(4) Nonassignability.** Accreditation shall not be assignable to any other organization or provider.

**24.5(5) Discontinuation.**

a. A discontinued organization is one that has terminated the service for which it has been accredited.

b. Accreditation is not transferable. Any person or other legal entity acquiring an accredited facility for the purpose of operating a service shall make an application as provided herein for a new certificate of accreditation. Similarly, any organization having acquired accreditation and desiring to alter the service philosophy or transfer operations to different premises must notify the division 30 calendar days before taking action in order for the division to review the change.

c. An organization shall notify the division of any sale or change in the business status or transfer of ownership in the business or impending closure of the accredited or certified service at least 30 calendar days before closure. The organization shall be responsible for the referral and placement of individuals, as appropriate, and for the preservation of all records.

**24.5(6) Application and renewal procedures.** An organization whose certification has been denied or revoked shall not reapply for at least six months from the notice of decision denying or revoking accreditation. An applicant for accreditation shall submit Form 470-3005, Application for Accreditation, signed by the organization's chief executive officer and the chairperson of the governing body, and the following information:

a. The name and address of the applicant organization.

b. The name and address of the chief executive officer of the applicant organization.

c. The type of organization and specific services for which the organization is applying for accreditation.

d. The targeted population groups for which services are to be provided, as applicable.

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e. The number of individuals in each of the targeted population groups to be served, as applicable.

f. Other relative information related to the standards as requested by division staff.

**24.5(7) Application review.** An organization seeking accreditation shall submit a completed application, Form 470-3005, to the division.

a. The division shall review the materials submitted to determine that the application is complete and request any additional material as needed. Reviews shall commence only after the organization has submitted all application material.

b. The commission may grant organizations applying for first-time accreditation initial accreditation for 270 days to operate until the division completes an on-site survey. The commission shall base the accreditation decision on a report by the division that the organization has an approved policy and procedure manual that includes job descriptions of the staff that show how the staff assigned to the positions meet the qualifications in the standards and policies and procedures of the organization.

**24.5(8) Survey review of organizations.** The division shall review organizational services and activities as determined by the accreditation category. This review may include on-site case record audits, administrative procedures, clinical practices, personnel records, performance improvement systems and documentation, and interviews with staff, individuals, boards of directors, or others deemed appropriate, consistent with the confidentiality safeguards of state and federal laws. The division shall review case records and personnel records to see how the organization implements each of the indicators in the standards. If the documentation is not found in the records, the organization shall show, at the time the division staff is on site, documentation of how the indicator was accomplished.

a. A team shall make an on-site visit to the organization. The division shall not be required to provide advance notice to the provider of the on-site visit for accreditation.

b. The on-site team shall consist of designated members of the division staff. At the division's discretion, the team may include provider staff of other providers, individuals, and others deemed appropriate.

c. The team shall survey the organization that has applied for accreditation or that is being reviewed as determined by accreditation category and the services indicated on the accreditation application in order to verify information contained in the application and ensure compliance with all applicable laws, rules and regulations.

d. At the end of the survey, the team leader shall lead an exit review. Before the close of the on-site review, the organization must provide the team leader any documentation that demonstrates how the organization has met these standards for services.

e. The accreditation team leader shall send a written report of the findings to the organization within 30 working days after completion of the accreditation survey.

f. The division shall offer technical assistance to organizations applying for first-time accreditation. Following accreditation, any organization may request technical assistance from the division to bring into conformity those areas found in noncompliance with this chapter's requirements. The commission may also require that technical assistance be provided to an organization as staff time permits, if multiple deficiencies are noted during a survey to assist in implementation of an organization's corrective action plan. Re-

newal applicants may be provided technical assistance as needed, if staff time permits.

g. Organizations required to develop a corrective action and improvement plan shall submit it to the division within 30 working days after the receipt of a report issued as a result of the division's survey review. The corrective action plan shall include specific problem areas cited, corrective actions to be implemented by the organization, dates by which each corrective measure shall be completed, and quality assurance and improvement activities to measure and ensure continued compliance.

h. The division shall prepare all documents with a final recommendation regarding accreditation to be presented at the commission meeting. The division shall mail to all commission members summary reports of the on-site service review or desk review and a final recommendation concerning accreditation on each application to be processed at the next commission meeting. If the commission approves accreditation, Form 470-3006, Notice of Action-Approval, shall be issued which states the duration of the accreditation and the services that the organization is accredited to provide. If the commission denies or revokes accreditation, Form 470-3008, Notice of Action-Denial, shall be issued which states the reasons for the denial.

i. The division may grant an extension to the period of accreditation for an organization if there has been a delay in the accreditation process that is beyond the control of the organization, division, or commission; or the organization has requested an extension to permit the organization to prepare and obtain approval of a corrective action plan. The division shall establish the length of the extension on a case-by-case basis.

**441—24.6(225C) Deemed status.** The commission may grant deemed status to organizations accredited by a recognized national, not-for-profit, accrediting body when the commission determines the accreditation is for similar services. The commission shall also grant deemed status for supported community living services to organizations that are certified under 441—subrule 77.37(14).

**24.6(1) National accrediting bodies.** The national accrediting bodies currently recognized as meeting division criteria for possible deeming are:

a. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

b. The Commission on Accreditation of Rehabilitation Facilities (CARF).

c. The Council on Quality and Leadership in Supports for People with Disabilities (The Council).

d. Council on Accreditation of Services for Families and Children (COA).

The accreditation credentials of these national bodies must specify the type of organization, programs, and services that they accredit and include targeted population groups, if appropriate.

Deemed status means that the division is accepting an outside body's review, assessment, and accreditation of an organization's functioning and services. Therefore, the accrediting body doing the review must be assessing categories of organizations and types of programs and services corresponding to those described under this chapter.

When an organization that is nationally accredited requests deemed status for services not covered by the national body's standards but covered under this chapter, the accreditation for those services shall be done by the division. Technical assistance by division staff shall be provided to deemed status organizations as time permits.

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**24.6(2) Reservations.** When deemed status is granted, the commission and the division reserve the following:

a. To have division staff conduct on-site focused reviews for those organizations applying for deemed status which the division has not previously accredited.

b. To have division staff do joint site visits with the accrediting body, attend exit conferences, or conduct focused follow-behind visits as determined to be appropriate in consultation with the national accrediting organization and the provider organization.

c. To be informed of and to investigate all complaints that fall under this chapter's jurisdiction and to make findings as a result of the investigation. Complaints and findings shall be reported to the national accrediting body. The complaint process outlined in this chapter shall be followed.

d. To review and act upon deemed status under the following circumstances: when complaints have been founded, when the national accreditation status of the provider expires without renewal, or when the organization's status is downgraded or withdrawn by the national accrediting body.

**24.6(3) Application for deemed status.**

a. To apply for deemed status, the organization shall submit Form 470-3332, Application and Letter of Agreement, and copies of the latest survey report and accreditation certificate, documentation of specific programming policies and procedures for populations being served, and credentials for staff providing services to populations served.

b. Once the division has begun an on-site visit, the division shall not accept an application for deemed status. The organization shall complete the accreditation process.

**24.6(4) Requirements for deemed status.** To be eligible for deemed status, the organization shall:

a. Be currently accredited by a recognized national accrediting body for services that are defined in this chapter; or

b. Be currently accredited under 441—subrule 77.37(14) for supported community living under the home- and community-based waiver. If individuals with mental illness are served, the provider must submit verification of the training and credentials of the staff to show that the staff can meet the needs of the individuals they serve.

c. Require the supported community living staff to have the same supervisor as the HCBS/MR program.

d. Require staff for the program being deemed to have the training and credentials needed to meet the needs of the person served.

**24.6(5) Granting of deemed status.** When the commission grants deemed status, the accreditation period shall coincide with the time period awarded by the national accrediting body or the certification for home- and community-based services. Under no circumstances shall the commission award accreditation for longer than three years.

**24.6(6) Continuation of deemed status.**

a. The organization shall send a copy of Form 470-3332, Application and Letter of Agreement, along with a copy of the application for renewal to the national accrediting body at the same time as application is made to a national accrediting body.

b. HCBS staff shall furnish to the division copies of the letter notifying a provider of a forthcoming recertification for organizations deemed for supported community living under the home- and community-based services (HCBS) waiver.

c. Following the on-site review by a national accrediting body, the organization shall send the division a copy of the cover sheet and national accrediting body report within 30 calendar days from the date that the organization receives the

documents. If a corrective action plan is required, the organization shall send the division a copy of all correspondence and documentation related to the corrective action.

d. HCBS staff shall furnish the division with copies of HCBS certification reports and any corrective action required by HCBS within 30 calendar days after HCBS staff complete the report or the organization completes required corrective action.

**441—24.7(225C) Complaint process.** The division shall receive and record complaints by individuals, employees, any interested persons, and the public relating to or alleging violations of applicable requirements of the Iowa Code or rules adopted pursuant to the Code.

**24.7(1) Submittal of complaint.** The complaint may be delivered personally or by mail to the MH/DD Division, Department of Human Services, Fifth Floor, Hoover State Office Building, 1305 East Walnut, Des Moines, Iowa 50319-0114, or by telephone (515)281-5874. To the extent allowed by law the division shall keep the name of the complainant confidential.

a. As needed or requested, the division shall assist individuals in making a complaint.

b. The information received should specifically state the basis of the complaint.

**24.7(2) Review of complaint.** Upon receipt of a complaint, the division shall make a preliminary desk audit review of the complaint to determine an appropriate response. That response may include notifying the individual who issued the complaint that there is no basis for a review, referring the complaint to another investigative body, or making a determination to do a full investigation. If the division concludes that the complaint is reasonable, has merit, and is based on a violation of rules in this chapter, it may make an investigation of the organization. The on-site review does not require advance notice to the organization. The division may investigate some complaints by an office audit. The division shall give priority for on-site visits to instances when individuals given service are at immediate risk of jeopardy.

**24.7(3) On-site investigation.** If a decision is made to conduct an on-site investigation, the division shall notify the chief executive officer and board chairperson of the organization involved that the division has received a complaint before or at the commencement of the on-site investigation.

a. The division shall give the organization an opportunity to informally present a position regarding allegations in the complaint. The organization may submit the position in writing within five working days following the on-site visit or present it in a personal conference with division staff.

b. The division shall submit a written report by certified mail to the chief administrative officer of the organization and the chairperson of the board of directors within 20 working days after completion of the investigation.

c. The report shall indicate whether the complaint was or was not substantiated, the basis for the substantiation or nonsubstantiation, the specific rules violated, and a recommendation for corrective action with time lines specified in the report.

d. The date of delivery shown by the certified mail stub shall constitute the date of official notice.

**24.7(4) Review by commission.** To the extent allowed by Iowa Code section 21.5, the commission may review the complaint and investigation report in a closed meeting. When individuals receiving services are in immediate jeopardy, the commission may call an emergency meeting to make a decision on possible revocation or denial of accreditation.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

a. If the complaint is substantiated, the commission may take actions deemed appropriate, which may include shortening the term of accreditation, requiring a corrective action plan, or suspending or revoking an organization's accreditation status, depending on the severity of the substantiated complaint.

b. The action taken by the commission shall be voted upon in the reconvened public meeting and entered into the official record of commission minutes.

c. The division shall inform the complainant and the organization by certified mail of the findings and actions taken by the commission. The date of delivery shown by the certified mail stub shall constitute the date of official notice.

**24.7(5) Corrective action plan.** When the commission takes action to suspend or revoke accreditation, there will be no corrective action plan. In other instances, if the complaint is substantiated, the organization shall submit a corrective action plan to the division within 20 calendar days after receiving the commission's decision. This plan must respond to violations cited and commission requirements and include time lines, internal monitoring systems, and performance improvement planning. Failure of the organization to respond within 20 calendar days with an acceptable corrective action plan that addresses the organization's plan of correction following a substantiated investigation or complaint may of itself constitute the basis for revocation or suspension of accreditation. The commission shall determine the appropriate action based on the information submitted. The division shall notify the organization of any action the commission takes.

**441—24.8(225C) Appeal procedure.** An appeal may be filed using the procedure identified in 441—Chapter 7. Notice of an appeal shall be sent to Appeals Section, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50319-0114, within 30 calendar days of the written decision from the commission.

**441—24.9(225C) Exceptions to policy.** Exceptions to policy shall follow the policies and procedures in the department's general rule on exceptions to policy at rule 441—1.8(17A,217).

These rules are intended to implement Iowa Code chapter 225C.

**ARC 1202B****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 65, “Administration,” appearing in the Iowa Administrative Code.

These amendments provide that all households eligible for expedited food stamp benefits will now receive their benefits through the mail rather than picking them up at the

county office. This may mean that it may take these households longer to receive their food stamps. These households will still receive their food stamp benefits within the federally mandated time period of seven days from the date the application is received. This change is being implemented because of the reduction in staff and in the number of full-time offices.

These amendments also make the following technical revisions to policy:

- A preamble is added to the rules to clarify the purpose of the chapter.
- Rules that are mandated by federal regulations and are not a state option are rescinded.
- References and form numbers are updated.

These technical changes were made in response to public comments and staff review during the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers in specified situations because federal food stamp law does not allow for any waivers.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Ames – January 16, 2002 Story County DHS Office Second Floor Conference Room 126 South Kellogg Street Ames, Iowa 50010	10 a.m.
Cedar Rapids – January 16, 2002 Iowa Building Seventh Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	9 a.m.
Council Bluffs – January 16, 2002 Administrative Conference Room 417 East Kaneshville Boulevard Council Bluffs, Iowa 51501	9 a.m.
Davenport – January 16, 2002 Bicentennial Building Fifth Floor Conference Room 428 Western Avenue Davenport, Iowa 52801	10 a.m.
Des Moines – January 16, 2002 City View Plaza Conference Room 104 1200 University Des Moines, Iowa 50314	10 a.m.
Dubuque – January 16, 2002 Dubuque County DHS Office Town Clock Plaza Nesler Center Third Floor Conference Rooms A and B Dubuque, Iowa 52001	9 a.m.
Fort Dodge – January 17, 2002 Webster County DHS Office 330 First Avenue North Fort Dodge, Iowa 50501	1:30 p.m.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Marshalltown – January 17, 2002 1 p.m.  
 Marshall County DHS Office  
 First Floor Conference Room  
 206 West State Street  
 Marshalltown, Iowa 50158

Mason City – January 16, 2002 10 a.m.  
 Cerro Gordo County DHS Office  
 Mohawk Square, Liberty Room  
 22 North Georgia Avenue  
 Mason City, Iowa 50401

Sioux City – January 17, 2002 1:30 p.m.  
 Suite 500  
 520 Nebraska Street  
 Sioux City, Iowa 51101

Waterloo – January 16, 2002 10 a.m.  
 Black Hawk County Office  
 Pinecrest Office Building  
 Conference Rooms 213/215  
 1407 Independence Avenue  
 Waterloo, Iowa 50703

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

These amendments are intended to implement Iowa Code section 234.12.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 65** by adopting the following new preamble:

## PREAMBLE

The basis for the food stamp program is as provided in Title 7 of the Code of Federal Regulations. The purpose of this chapter is to provide for adoption of new and amended federal regulations as they are published, to establish a legal basis for Iowa's choice of administrative options when administrative options are given to the state in federal regulations, to implement the policy changes that the United States Department of Agriculture (USDA) directs states to implement that are required by law but not yet included in federal regulations, and to implement USDA-approved demonstration projects and waivers of federal regulations.

ITEM 2. Amend rule **441—65.1(234)** as follows:

Amend the definition of "notice of expiration" as follows:

"Notice of expiration" means either a message printed on an application for continued program participation, Review/Recertification Eligibility Document (RRED), Form 470-2881, which is automatically issued to the household, or a hand-issued Form ~~FP-2310-0 470-0325~~, Notice of Expiration.

Rescind the definitions of "intentional failure to comply" and "X-PERT."

ITEM 3. Amend rule 441—65.2(234), introductory paragraph and first unnumbered paragraph, as follows:

**441—65.2(234) Application.** Persons in need of food stamps may file an application at an office in the administrative area in which they reside. An application is filed the day an appropriate food stamp office receives an application for food stamps on ~~Form 470-3112 or 470-3122 (Spanish), Application for Assistance, Part 1; Form FP-2101-0 470-0306 or FP-2101-1 470-0307 (Spanish), Application for Food Stamps; or Form PA-2207-0 470-0462 or Form PA-2230-0~~

~~470-0466 (Spanish), Public Assistance Application, containing the applicant's name and address which is signed by either a responsible member of the household or the household's authorized representative. A household shall complete a Public Assistance Application when any person in the household is applying for or receiving aid through the family investment program, related medical programs or the refugee resettlement assistance programs. For cases not selected for the X-PERT system, the~~ The application is complete when a completed Form ~~FP-2101-0 470-0306, or FP-2101-1 470-0307, 470-0462, or 470-0466 Application for Food Stamps~~, is submitted; ~~when the~~ An application form is necessary when it is for a month the household is not certified for food stamps or the application is for a when the household whose previous participation was in another applies in a new administrative area, ~~except when any person in the household is applying for aid through the family investment program or related medical programs, the refugee resettlement assistance programs, or the child medical assistance program. These persons shall complete Form PA-2207-0 or Form PA-2230-0 (Spanish), Public Assistance Application, no later than at the time of the required interview.~~

~~For cases selected for X-PERT, the application is complete when a completed Form 470-3112 or Form 470-3122 (Spanish), Application for Assistance, Part 1, is submitted; an interview has been held; the household is provided the Summary of Facts, Form 470-3114, for review; and an adult food stamp household member has signed the Summary Signature Page, Form 470-3113 or Form 470-3123 (Spanish) when the application is for a month the household is not certified for food stamps or the application is for a household whose previous participation was in another administrative area.~~

ITEM 4. Amend rule 441—65.3(234) as follows:

**441—65.3(234) Administration of program.** The food stamp program shall be administered in accordance with the Food Stamp Act of 1977, 7 U.S.C. 2011 *et seq.*, and in accordance with federal regulation, Title 7, Parts 270 through 282 283 as amended to June 1, 2001.

A copy of the federal law and regulations may be obtained at no more than the actual cost of reproduction by contacting the Division of Economic Assistance, Department of Human Services, 1305 East Walnut, Hoover State Office Building, Des Moines, Iowa 50319-0114, (515)281-3133.

This rule is intended to implement Iowa Code section 234.12.

ITEM 5. Amend rule 441—65.4(234), introductory paragraph, as follows:

**441—65.4(234) Issuance.** All food stamp coupons are issued by direct mail except for expedited food stamp benefits, exchange for improperly manufactured or mutilated coupons, and exchange of old series coupons for new series coupons. ~~Expedited food stamp coupons shall be issued over the counter by local or area offices. Persons residing in counties in which a local or area office is not located shall have their expedited food stamp coupons mailed unless the interview is conducted in person at a local or area office in the administrative area in which they reside and benefits are picked up on the day of the interview.~~ Exchanged coupons are issued over the counter by local or area offices. Food stamp recipients may chose to receive and use their benefits by electronic benefit transfer (EBT) instead of food stamp coupons in counties where this option is available. Where the option of EBT issuance is available and the household chooses this option, expedited food stamp benefits may *shall* be issued by



## HUMAN SERVICES DEPARTMENT[441](cont'd)

EBT if expedited time frames can be met. Food stamp benefits for ongoing certifications are mailed or are otherwise made available to the household on a staggered basis during the first 15 days of each month.

ITEM 6. Rescind and reserve subrule **65.8(9)**.

ITEM 7. Amend rule 441—65.16(234) as follows:

**441—65.16(234) Complaint system.** Clients wishing to file a formal written complaint concerning the food stamp program may submit Form ~~FP-2238-0 470-0323~~, or ~~FP-2238-1 470-0327~~ (Spanish), Food Stamp Complaint, to the office of field support. Department staff shall encourage clients to use the form.

ITEM 8. Amend rule 441—65.19(234) as follows:

Amend subrule **65.19(2)**, paragraphs “a” and “c,” as follows:

a. ~~The department will supply the Public Assistance Eligibility Report, Form PA-2140-0 470-0454 (computer issued), 470-0455 (manually issued), or 470-3719 (Spanish, manually issued) will be supplied to the recipient, by the department,~~ as needed or requested. The department shall provide a postage-paid envelope for return of Form ~~PA-2140-0~~, the Public Assistance Eligibility Report.

c. Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, accompanied by verification as required in 65.19(14), and signed and dated by a responsible household member on or after the last day of the budget month. When the ~~PA-2140-0 Public Assistance Eligibility Report~~ is used and a person in the household is also required to report monthly for another public assistance program, the form shall also be signed by all individuals required to sign for that program to be considered complete.

Amend subrule 65.19(4) as follows:

**65.19(4) Public assistance income.** ~~The aid to dependent children department shall consider family investment program and refugee cash assistance grant(s) grants authorized for the issuance month will be considered in determination of the household's eligibility and benefit level. Adjustive The department shall count~~ *adjustive or corrective public assistance payments shall be counted* retrospectively.

Amend subrule **65.19(6)**, paragraph “a,” as follows:

a. Households required to submit ~~aid to dependent children family investment program~~ monthly reports.

Amend subrule 65.19(8) as follows:

**65.19(8) Prospective beginning months.** ~~All The department shall calculate benefits for eligible households will have benefits calculated~~ prospectively for the two beginning months. When a household has applied for assistance from the family investment program ~~or related medical programs, the child medical assistance program~~ or the refugee resettlement cash assistance program, and for food stamp benefits using a Form ~~470-3112, Application for Assistance, Part 1, or a Form PA-2207-0 470-0462 or PA-2230-0 470-0466~~ (Spanish), Public Assistance Application, *the department shall allow a third food stamps' stamp beginning month will be allowed. The department shall allow a third beginning month* when the public assistance program's first “initial month” is the same calendar month as the second food stamps' stamp beginning month, and the third beginning month permits a simultaneous transition to retrospective budgeting.

ITEM 9. Amend subrules 65.20(1) and 65.20(2) as follows:

**65.20(1)** Issuance of the automated Notice of Expiration will occur with the mailing of Form 470-2881, Review/Recertification Eligibility Document, or a hand-issued Form ~~FP-2310-0 470-0325~~, Notice of Expiration.

**65.20(2)** Issuance of the Notice of Expiration, Form ~~FP-2310-0 470-0325~~, will occur at the time of certification if the household is certified for one month, or for two months, and will not receive the automated Notice of Expiration.

ITEM 10. Rescind and reserve subrule **65.21(3)**.

ITEM 11. Rescind and reserve subrule **65.28(9)**, paragraph “h.”

ITEM 12. Rescind and reserve rule **441—65.37(234)**.

ITEM 13. Rescind and reserve rule **441—65.42(234)**.

ITEM 14. Rescind and reserve rule **441—65.45(234)**.

## ARC 1198B

HUMAN SERVICES  
DEPARTMENT[441]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” appearing in the Iowa Administrative Code.

These amendments clarify the policy governing the Health Insurance Premium Payment Program as follows:

- The Department shall request all information in writing and shall give the policyholder ten calendar days in which to provide it.
- When an employer will not agree to accept premium payment from the Department in lieu of a payroll deduction to the employee's wages, the Department shall issue reimbursement to the policyholder five working days prior to the policyholder's pay date.
- Timely and adequate notice shall be as defined in the Department's rules on appeals at 441—subrule 7.7(1).

These clarifications were added in response to public comments submitted during the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers because the amendments are merely technical in nature.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

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

The following amendments are proposed.

ITEM 1. Amend rule 441—75.21(249A), introductory paragraph, as follows:

**441—75.21(249A) Health insurance premium payment program.** ~~The department shall pay for the cost of enrolling an eligible Medicaid recipient in a health insurance plan~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

when the department determines it is cost-effective to do so. Under the health insurance premium payment program, the department shall pay for the cost of premiums, coinsurance and deductibles for Medicaid-eligible individuals when the department determines that those costs will be less than the cost of paying for the individual's care directly.

ITEM 2. Amend subrule 75.21(7), paragraph "c," as follows:

c. If the household fails to cooperate in providing information necessary to establish ongoing eligibility, the department shall discontinue premium payment ~~shall be discontinued pending~~ after timely and adequate notice. The department shall request all information in writing and allow the policyholder ten calendar days in which to provide it.

ITEM 3. Amend subrule 75.21(9), paragraph "b," as follows:

b. When the employer will not agree to accept premium payments from the department in lieu of a payroll deduction to the employee's wages, the department shall reimburse the policyholder directly for payroll deductions or for payments made directly to the employer for the payment of health insurance premiums. The department shall issue reimbursement to the policyholder five working days prior to the policyholder's pay date.

ITEM 4. Amend subrule 75.21(13) as follows:

75.21(13) Notices. An adequate notice shall be provided to the household under the following circumstances:

a. to c. No change.

A department shall provide a timely and adequate notice as defined in 441—subrule 7.7(1) ~~shall be provided~~ to the household informing them of a decision to discontinue payment of the health insurance premium because the department has determined the policy is no longer cost-effective or because the recipient has failed to cooperate in providing information necessary to establish continued eligibility for the program.

## ARC 1199B

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 143, "Interstate Compact on Juveniles," appearing in the Iowa Administrative Code.

These amendments revise policy governing the Interstate Compact on Juveniles to:

- Add a preamble to the chapter to explain that articles adopted by each of the participating states govern the Interstate Compact and to explain Iowa's obligations as a party to the Compact.

- Revise policy regarding processing of parolees and probationers from another state who commit a felony while in Iowa to be consistent with the Interstate Compact.

- Correct Iowa Code references.

These needed corrections were identified while the Department was completing the rules assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers as waivers would be inconsistent with the interstate nature of the Compact.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

These amendments are intended to implement Iowa Code section 232.171.

The following amendments are proposed.

ITEM 1. Amend 441—Chapter 143 by adopting the following new preamble:

## PREAMBLE

Iowa Code section 232.171 authorizes the state of Iowa to enter into the interstate compact on juveniles and incorporates into the Iowa Code the 15 basic articles and optional amendments that govern the interstate compact for all participating parties. The department implements the interstate compact on juveniles and participates in the contractual agreement with the other 49 states, the District of Columbia, the Virgin Islands, and Guam. The contractual agreement allows the parties to cooperate on the interstate aspects of juvenile delinquency as well as the return from one state to another of nondelinquent children who have run away from home.

ITEM 2. Rescind the implementation clauses following rules 441—143.1(232) and 441—143.2(232) and adopt the following new implementation clause at the end of the chapter:

These rules are intended to implement Iowa Code section 232.171.

ITEM 3. Amend subrule 143.4(5) as follows:

143.4(5) A parolee or probationer from another state held or placed in Iowa under the provisions of article VII and who commits a felony while in Iowa, shall be processed:

- a. Returned to the sending state per mutual agreement;
- or
- b. Processed according to the Iowa statutes and not returned to the sending state for violation.

## ARC 1200B

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 151, "Juvenile Court Services Directed Programs," appearing in the Iowa Administrative Code.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments revise policy governing juvenile court services directed programs to:

- Allow an amount up to 5 percent of the total allocation of the graduated sanction services to be set aside for juvenile court services administrative costs for the graduated sanction programs and require the state court administrator to establish a pay schedule for the accountant or audit position established in each judicial district.
- Allow an individual or a group rate as an option for the life skills service.
- Provide that juvenile court school liaisons and schools are not required to maintain or submit lists of children served for those months covered by a school employee contract and for which the salary is prorated, school is not in session, and no service is provided.
- Change references from "Department region" to "Department service area" and from "Department regional administrator" to "Department service area manager," consistent with the restructuring of the Department.

These revisions are being proposed in response to public comment received during the rules review process mandated by Executive Order Number 8 and in response to the restructuring of the Department.

These amendments do not provide for waivers because these programs are governed by rules or court orders and the rules provide enough administrative flexibility that waivers are unnecessary.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

These amendments are intended to implement Iowa Code section 232.141.

The following amendments are proposed.

ITEM 1. Amend rule 441—151.1(232), definitions of "child" and "child welfare and juvenile justice plan," as follows:

"Child" means a person under 18 years of age and also includes the following: A "child" means a person up to 19½ years of age when the child (1) is adjudicated delinquent and is under the jurisdiction of juvenile court services or (2) voluntarily accepts graduated sanction services when being released from the state training school, a highly structured juvenile program, or group care and a chief juvenile court officer or a chief juvenile court officer and a department ~~regional administrator~~ *service area manager* extend eligibility for the services.

"Child welfare and juvenile justice plan" means the annual plan for using decategorized funds within each department ~~region~~ *service area*.

ITEM 2. Amend rule 441—151.2(232) as follows:

Amend subrule 151.2(2), paragraph "a," as follows:

a. An amount up to 3 5 percent, *or as needed*, of the total allocation of the graduated sanction services shall be set aside for juvenile court services administrative costs for the graduated sanction programs. The administrative costs shall include the costs of an accountant or audit position established in each judicial district. The state court administrator shall *establish a written job classification and pay schedule for the accountant or audit position established in each judicial district and shall* administer the set-aside for the eight judicial districts.

Amend subrule 151.2(3), paragraph "d," as follows:

d. The chief juvenile court officer shall participate in developing an annual child welfare and juvenile justice plan for using decategorized funds within each department ~~region~~ *service area*. The respective chief juvenile court officers and department ~~regional administrator~~ *service area manager* shall sign the child welfare and juvenile justice plan.

ITEM 3. Amend subrule 151.30(5), paragraph "b," as follows:

b. The life skills instruction may be provided on an individual or group basis. ~~A~~ *An individual rate or a group rate shall be established for life skills instruction provided to more than one individual at a time.*

ITEM 4. Amend subrule 151.31(5), paragraph "b," as follows:

b. School-based supervision is generally not an ongoing service provided to children. To substantiate claims for reimbursement, the juvenile court school liaison shall maintain a list (roster) by month of the individual children referred for service and for whom the claim is made. For a claim to be valid, the school-based supervision staff shall have face-to-face or verbal contact with each child whose name appears on the roster. The list shall include the name of the child and the referral source. The school or juvenile court services shall maintain a copy of the list and the claim. The list and the claim are subject to audit.

The juvenile court school liaison is not required to list the names of children receiving group services. *Juvenile court school liaisons and schools are not required to maintain or submit lists of children served for those months covered by a school employee contract for which the salary is prorated when school is not in session and no service is provided. The prorated salary arrangement shall be described in the contract.*

## ARC 1203B

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 225C.6, the Department of Human Services proposes to amend Chapter 153, "Social Services Block Grant and Funding for Local Services," appearing in the Iowa Administrative Code.

This amendment rescinds Division III, "Mental Illness, Mental Retardation, and Developmental Disabilities—Local Services." These rules are no longer needed given the changes that have taken place in the last five years in the disability services system. Establishing policy for accessing funding for services is now the responsibility of the counties, and the state does not have the authority to establish or to enforce the requirements in this division.

This needed rescission was identified while the Department was completing the rule assessment mandated by Executive Order Number 8.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment does not provide for waivers because the amendment is merely meant to remove policy that is no longer used.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

This amendment is intended to implement Iowa Code section 225C.4.

The following amendment is proposed.

Amend **441—Chapter 153** by rescinding and reserving **Division III**.

**ARC 1201B****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 rescind Chapter 171, "Adult Day Care," Chapter 172, "Sheltered Work/Work Activity Services," Chapter 174, "Transportation Services," Chapter 206, "Community Supervised Apartment Living Arrangements Services Program," and Chapter 207, "Residential Services for Adults," appearing in the Iowa Administrative Code.

This amendment rescinds chapters dealing with the purchase of the following adult services: adult day care, sheltered work/work activity services, transportation services, community supervised apartment living arrangements services, and residential services for adults. These rules are no longer needed given the changes that have taken place in the last five years in the disability services system. Contracting for services is now the responsibility of the counties, and the Department does not have the authority to establish or to enforce the requirements in these chapters.

These needed deletions were identified while the Department was completing the rule assessment mandated by Executive Order Number 8.

This amendment does not provide for waivers because the amendment is merely meant to remove policy that is no longer used.

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, 1305 East Walnut, Des Moines, Iowa 50319-0114, on or before January 16, 2002.

This amendment is intended to implement Iowa Code section 234.6.

The following amendment is proposed.

Rescind and reserve **441—Chapter 171, 441—Chapter 172, 441—Chapter 174, 441—Chapter 206, and 441—Chapter 207**.

**ARC 1218B****NURSING BOARD[655]****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 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

These amendments remove the delinquent license fee for individuals whose licenses became delinquent prior to July 4, 1963, require board approval for licensure of an individual who holds a license under sanction in any United States jurisdiction or another country, and reduce continuing education requirements to reactivate/reinstate the nursing license.

Any interested person may make written comments or suggestions on or before January 15, 2002. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256 or in the Board office at S.W. 8th Street, by appointment.

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

The following amendments are proposed.

ITEM 1. Amend rule **655—3.1(17A,147,152,272C)**, definition of "fees," numbered paragraph "**11**," to read as follows:

11. For a registered nurse/licensed practical nurse delinquent license fee, \$100, plus back renewal fees to date due, calculated at \$25 per year or any part thereof. The total back renewal fees shall not exceed \$250. *The delinquent license fee shall not be assessed if the license became delinquent prior to July 4, 1963.*

ITEM 2. Amend subrule **3.3(1)**, paragraph "**c**," to read as follows:

c. Approval by the board of those with a past felony conviction or a record of prior disciplinary action, regardless of jurisdiction.

ITEM 3. Amend subrule **3.5(2)** by rescinding paragraph "**c**" and relettering paragraphs "**d**" and "**e**" as "**c**" and "**d**."

ITEM 4. Amend subrule **3.7(5)**, paragraph "**c**," subparagraph (2), to read as follows:

(2) The licensee shall have completed ~~15~~ 12 contact hours of continuing education as specified in 655—Chapter 5, earned within the 12 months prior to reinstatement.

ITEM 5. Amend subrule **3.7(6)**, paragraph "**b**," subparagraph (2), to read as follows:

(2) The licensee shall have completed ~~15~~ 12 contact hours of continuing education as specified in 655—Chapter 5, earned within the 12 months prior to reactivation.

## ARC 1208B

### PERSONS WITH DISABILITIES DIVISION[431]

#### 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 216A.76, the Persons with Disabilities Division hereby gives Notice of Intended Action to adopt new Chapter 7, "Waiver Rules," Iowa Administrative Code.

Executive Order Number 11 issued on September 14, 1999, requires each agency with authority to adopt rules, as defined in Iowa Code sections 17A.2(1) and 17A.2(11), to initiate rule-making proceedings to adopt the uniform waiver rule outlined in the Executive Order. Executive Order Number 11 was published in the Iowa Administrative Bulletin, Volume XXII, Number Seven, dated October 6, 1999. Adoption of this new chapter will provide the Division with waiver rules.

Any interested person may make written suggestions or comments on these proposed rules on or before January 15, 2002. Such written materials should be directed to the Administrator, Division of Persons with Disabilities, Department of Human Rights, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319; fax (515)242-6119.

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

The following new chapter is proposed.

#### CHAPTER 7 WAIVER RULES

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

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

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

**431—7.4(17A) Compliance with law.** The division may not issue a waiver under this chapter unless: (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provi-

sions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

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

1. The application of the rule to the person at issue does not advance, to any extent, any of the purposes for the rule or set of rules; or

2. The following criteria have been met:

- The application of the rule or set of rules to the person at issue would result in an undue hardship or injustice to that person; and

- The waiver on the basis of the particular circumstances relative to the specified person would be consistent with the overall public interest.

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

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

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

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

1. The name, address, and telephone number of the entity or person for whom a waiver is requested, and the case number of any related contested case.

2. A description and citation of the specific rule or set of rules from which a waiver is requested.

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

4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the petitioner and the division relating to the activity affected by the proposed waiver, including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.

6. Any information known to the requester relating to the division's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver.

## PERSONS WITH DISABILITIES DIVISION[431](cont'd)

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

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

10. Signed releases of information authorizing persons with knowledge of the waiver request to furnish the division with information relevant to the waiver.

**431—7.9(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

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

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

**431—7.12(17A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

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

**431—7.14(17A) Time for ruling.** The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

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

**431—7.16(17A) Service of orders.** Within seven days of its issuance, any order issued under this chapter shall be trans-

mitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

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

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

1. The person who was the subject of the waiver order withheld from the division or knowingly misrepresented to the division material facts relevant to the propriety or desirability of the waiver; or

2. The alternative means of ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient, and no other means exists to protect the substantial legal rights of any person; or

3. The subject of the waiver order has failed to comply with all of the conditions contained in the order.

**431—7.19(17A) Violations.** A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**431—7.20(17A) Defense.** After the division issues an order granting a waiver, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

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

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

## REVENUE AND FINANCE DEPARTMENT

### Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue and Finance hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These

## REVENUE AND FINANCE DEPARTMENT(cont'd)

rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2001 by each taxpayer to determine the tax due for each taxpayer in the 2002-2003 fiscal year.

2001 ELECTRIC DELIVERY TAX RATES  
BY SERVICE AREA

<u>CO. #</u>	<u>MUNICIPAL ELECTRICS</u>	<u>DELIVERY TAX RATE</u>			
3226	Akron Municipal Utilities	0.00007442	3230	City of Fredericksburg	0.00000301
3201	Algona Municipal Utilities	0.00027701	3231	Glidden Municipal Electric Utility	0.00000235
3205	Alta Municipal Power Plant	0.00009747	3232	Guttenberg Municipal Electric	0.00002873
3207	Ames Municipal Electric System	0.00000098	3284	Mapleton Municipal Utilities	0.00009903
3209	Atlantic Municipal Utilities	0.00024840	3288	McGregor Municipal Utilities	0.00000795
3211	Bancroft Municipal Utilities	0.00101504	3234	Onawa Municipal Utilities	0.00010932
3213	Bellevue Municipal Utilities	0.00011259	3315	Primghar Municipal Light Plant	0.00002288
3228	Bigelow Municipal Electric Utility	0.00238113	3323	Southern Minnesota Mun. Power	0.00000000
3229	Bloomfield Municipal Electric Utility	0.00002962	3068	City of Afton	0.00000000
3216	Buffalo Municipal Electric System	0.00000305	3069	Alta Vista Municipal Utilities	0.00000000
3221	Cedar Falls Municipal Elec. Utility	0.00034130	3070	Alton Municipal Light & Power	0.00000000
3242	Corning Municipal Utilities	0.00033130	3071	Anita Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000415	3072	City of Aplington	0.00000000
3244	Denison Municipal Utilities	0.00001109	3073	Auburn Municipal Utility	0.00000000
3256	Graettinger Municipal Light Plant	0.00029081	3074	Aurelia Mun. Electric Utility	0.00011374
3258	Grand Junction Municipal Utilities	0.00000484	3075	Breda Mun. Electric System	0.00000000
3263	Harlan Municipal Utilities	0.00137185	3076	Brooklyn Municipal Utilities	0.00165903
3267	Hopkinton Municipal Utilities	0.00000902	3077	Callendar Electric	0.00000000
3271	Indianola Municipal Utilities	0.00000845	3078	Carlisle Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00016863	3079	Cascade Municipal Utilities	0.00139652
3274	Lamoni Municipal Utilities	0.00152280	3080	Corwith Municipal Utilities	0.00000000
3276	LaPorte City Utilities	0.00000943	3081	Dayton Light & Power	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00010590	3082	City of Dike	0.00000000
3285	Maquoketa Municipal Electric	0.00005487	3083	Durant Municipal Electric Plant	0.00000000
3293	Muscatine Municipal Utilities	0.00009555	3084	Dysart Municipal Utilities	0.00000000
3297	New Hampton Municipal Light Plant	0.00010653	3085	Earlville Municipal Utilities	0.00120612
3298	New London Municipal Utility	0.00052973	3087	Ellsworth Municipal Utilities	0.00000000
3304	Ogden Municipal Utilities	0.00006342	3088	City of Estherville	0.00000000
3307	Osage Municipal Utilities	0.00005051	3089	City of Fairbank	0.00000000
3309	Panora Municipal Electric Utility	0.00009949	3090	City of Farnhamville	0.00000000
3311	City of Pella	0.00007160	3091	Fonda Municipal Electric	0.00000000
3318	Rock Rapids Municipal Utilities	0.00000479	3092	Forest City Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000110	3093	Gowrie Municipal Utilities	0.00161035
3326	State Center Municipal Light Plant	0.00034439	3094	Grafton Municipal Utilities	0.00000000
3327	Story City Municipal Electric Utility	0.00011491	3095	Greenfield Municipal Utilities	0.00120107
3328	Sumner Municipal Light Plant	0.00021044	3096	Grundy Center Light & Power	0.00022173
3330	Tipton Municipal Utilities	0.00149179	3097	Hartley Municipal Utilities	0.00000000
3332	Traer Municipal Utilities	0.00053468	3098	Hawarden Municipal Utility	0.00000000
3337	Villisca Municipal Power Plant	0.00020736	3099	Hinton Municipal Electric/Water	0.00011001
3338	Waverly Light & Power	0.00079900	3100	Hudson Municipal Utilities	0.00000000
3342	Webster City Municipal Utilities	0.00037632	3101	Independence Light & Power	0.00000000
3345	West Bend Municipal Power Plant	0.00095365	3102	Keosauqua Light & Power	0.00000000
3346	West Liberty Municipal Electric Util.	0.00000722	3103	Kimballton Municipal Utilities	0.00000000
3347	West Point Municipal Utility System	0.00009989	3104	Lake Mills Municipal Utilities	0.00000000
3351	Winterset Municipal Utilities	0.00136610	3105	Lake Park Municipal Utilities	0.00000000
3237	Coon Rapids Municipal Utilities	0.00042603	3106	City of Larchwood	0.00000000
3277	Laurens Municipal Utilities	0.00035344	3107	City of Lawler	0.00000000
3291	Milford Municipal Utilities	0.00016799	3108	City of Lehigh	0.00000000
3324	Spencer Municipal Utilities	0.00010221	3109	Lenox Mun. Light & Power	0.00037484
3245	Denver Municipal Electric Utility	0.00006256	3110	Livermore Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00013617	3111	Long Grove Mun. Elec./Water	0.00000000
3217	Burt Municipal Electric Utility	0.00000190	3112	Manning Municipal Electric	0.00025459
3236	Coggon Municipal Light Plant	0.00004937	3113	City of Marathon	0.00000000
3252	Fontanelle Municipal Utilities	0.00036448	3114	Montezuma Municipal Light & Power	0.00000000
			3115	Mount Pleasant Municipal Utilities	0.00000000
			3116	Neola Light & Water System	0.00000000
			3117	Orange City Municipal Utilities	0.00000000
			3118	Orient Municipal Utilities	0.00000000
			3119	Paton Municipal Utilities	0.00000000
			3120	Paullina Municipal Utilities	0.00000000
			3121	Pocahontas Municipal Utilities	0.00000000
			3122	Preston Municipal Utilities	0.00000000
			3123	Readlyn Municipal Utilities	0.00000000



REVENUE AND FINANCE DEPARTMENT(cont'd)

3124	Remsen Municipal Utilities	0.00000000
3125	City of Renwick	0.00000000
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3129	City of Sergeant Bluff	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00128625
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3139	City of Westfield	0.00000000
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3142	Woodbine Municipal Utilities	0.00000000
3143	City of Woolstock	0.00000000

4286	Maquoketa Valley Electric Coop	0.00221262
4287	Consumers Energy	0.00236234
4299	Nishnabotna Valley REC	0.00094615
4336	United Electric Coop	0.00112324
4301	Northwest Iowa Power Coop	0.00000000
4300	North West Rural Electric Coop	0.00069571
4308	Osceola Electric Coop	0.00048836
4310	Pella Cooperative Electric	0.00198331
4313	Pleasant Hill Community Line	0.00032902
4316	Rideta Electric Coop	0.00310820
4319	Access Energy Coop	0.00083056
4320	Sac County Rural Electric Coop	0.00110413
4348	Western Iowa Power Coop	0.00101276
4322	Southern Iowa Electric Coop	0.00165227
4329	T.I.P. Rural Electric Coop	0.00223941
4352	Woodbury County Rural Electric Coop	0.00127509
4353	Wright Co. REC dba Prairie Energy Coop	0.00051075
4251	Federated Rural Electric Association	0.00055753
4254	Freeborn-Mower Cooperative Services	0.00093016
4333	Tri County Electric Coop	0.00133788
4273	Iowa Lakes Electric Coop	0.00103630
4290	Midland Power Cooperative	0.00199265

CO. # IOU's - ELECTRIC

DELIVERY TAX RATE

7206	Amana Society Service Co.	0.00049316
7248	Eldridge Electric & Water Utilities	0.00067237
7272	Interstate Power	0.00112694
7270	IES Utilities	0.00253530
7289	MidAmerican Energy	0.00278584
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Public Service Co.	0.00000000
7305	Omaha Public Power District	0.00140780
7334	Union Electric	0.00000000
7354	Geneseo Municipal Utilities	0.00000000

CO. # REC's

DELIVERY TAX RATE

4200	Southwest Iowa Service Coop	0.00289110
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00097519
4214	Boone Valley Electric Coop	0.00096243
4246	East-Central Iowa REC	0.00234065
4218	Butler County REC	0.00136469
4219	Calhoun County Electric Coop	0.00154802
4220	Cass Electric Coop	0.00004637
4223	Heartland Power Coop	0.00076837
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00116694
4235	Clarke Electric Coop	0.00305267
4240	Corn Belt Power Coop	0.00000000
4247	Eastern Iowa Light & Power	0.00076749
4249	Farmers Electric Coop - Kalona	0.00043783
4250	Farmers Electric Coop - Greenfield	0.00237767
4253	Franklin Rural Electric Coop	0.00088550
4255	Glidden Rural Electric Coop	0.00132625
4259	Grundy County REC	0.00076316
4260	Grundy Electric Cooperative	0.00055899
4261	Guthrie County REC	0.00251284
4262	Hancock Co. REC dba Prairie Energy Coop	0.00131670
4265	Harrison County REC	0.00142200
4266	Hawkeye Tri-County Electric Coop	0.00076862
4268	Humboldt County REC	0.00110297
4279	Linn County REC	0.00197128
4280	Lyon Rural Electric Coop	0.00082636

2001 NATURAL GAS DELIVERY TAX RATES  
BY SERVICE AREA

CO. # MUNICIPAL GAS

DELIVERY TAX RATE

5340	Wayland Municipal Gas	0.00313162
5349	Winfield Municipal Gas	0.00047581
5275	Lamoni Municipal Gas	0.00080185
5281	Manilla Municipal Gas	0.00425362
5283	Manning Municipal Gas	0.00020264
5306	Osage Municipal Gas	0.00003376
5241	Corning Municipal Gas	0.00000103
5238	Coon Rapids Municipal Gas	0.00002377
5344	West Bend Municipal Gas	0.00202550
5317	Rock Rapids Municipal Gas	0.00007706
5215	Brighton Gas	0.06141942
5021	Bedford Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5026	City of Clearfield	0.00000000
5027	Emmetsburg Municipal Gas	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000





REVENUE AND FINANCE DEPARTMENT(cont'd)

3119	Paton Municipal Utilities	0.00000000	5026	City of Clearfield	0.00000000
3120	Paullina Municipal Utilities	0.01291005	5027	Emmetsburg Municipal Gas	0.04543380
3121	Pocahontas Municipal Utilities	0.00574201	5028	City of Everly	0.00000000
3122	Preston Municipal Utilities	0.03985296	5029	City of Fairbank	0.00000000
3315	Primghar Municipal Light Plant	0.00422496	5030	Gilmore City Municipal Gas	0.33844293
3123	Readlyn Municipal Utilities	0.00000000	5031	Graettinger Municipal Gas	0.10977065
3124	Remsen Municipal Utilities	0.00191667	5032	Guthrie Center Municipal Gas	0.00000000
3318	Rock Rapids Municipal Utilities	0.00468148	5033	Harlan Municipal Gas	0.00548508
3126	Rockford Municipal Light Plant	0.00000000	5034	Hartley Municipal Gas	0.00000000
3127	Sabula Municipal Utilities	0.00160671	5035	Hawarden Municipal Gas	0.15114935
3128	Sanborn Municipal Light & Plant	0.00529582	5036	Lake Park Municipal Gas	0.00356940
3130	Shelby Municipal Utilities	0.00088137	5037	Lenox Municipal Gas	0.03276235
3131	Sibley Municipal Utilities	0.01123672	5038	Lineville City Natural Gas	0.00000000
3321	Sioux Center Municipal Utilities	0.00220515	5039	Lorimor Municipal Gas	0.00969424
3324	Spencer Municipal Utilities	0.00531977	5040	Montezuma Natural Gas	0.00000000
3132	Stanhope Municipal Utilities	0.01891450	5041	Morning Sun Municipal Gas	0.00000000
3133	Stanton Municipal Utilities	0.00028508	5042	Moulton Municipal Gas	0.05752912
3326	State Center Municipal Light Plant	0.00000000	5043	Prescott Municipal Gas	0.00000000
3327	Story City Municipal Electric Utility	0.00000000	5044	Preston Municipal Gas	0.26768134
3134	Stratford Municipal Utilities	0.00000000	5055	Remsen Municipal Gas	0.03496641
3135	Strawberry Point Electric Utility	0.00215547	5056	Rolfe Municipal Gas	0.00000000
3136	Stuart Municipal Utilities	0.00074010	5057	Sabula Municipal Gas	0.00822946
3328	Sumner Municipal Light Plant	0.00105289	5058	Sac City Municipal Gas	0.03095865
3330	Tipton Municipal Utilities	*	5059	Sanborn Municipal Gas	0.02684203
3332	Traer Municipal Utilities	0.00000000	5060	Sioux Center Municipal Gas	0.01782336
3337	Villisca Municipal Power Plant	0.00000000	5061	Tipton Municipal Gas	0.03805352
3137	Vinton Municipal Utilities	0.00572148	5063	Waukee Municipal Gas	0.21950923
3138	Wall Lake Municipal Utilities	0.00481462	5064	Wellman Municipal Gas	0.01781684
3338	Waverly Light & Power	0.00416162	5065	Whittemore Municipal Gas	0.04530901
3342	Webster City Municipal Utilities	0.00121415	5066	Woodbine Gas	0.02991861
3345	West Bend Municipal Power Plant	0.00194880	5067	Wall Lake Municipal Gas	0.00000000
3346	West Liberty Municipal Electric Util.	0.00361371			
3347	West Point Municipal Utility System	0.00000000			
3140	Whittemore Municipal Utilities	0.00509963			
3141	Wilton Municipal Light & Power	0.00000000			
3351	Winterset Municipal Utilities	0.00000000			
3142	Woodbine Municipal Utilities	0.00027609			

**ARC 1214B**

**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 421.17(19) and 422.68, the Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” Iowa Administrative Code.

Item 1 provides that an eligible business whose project involves value-added agricultural products, including cooperatives described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, may have unused investment tax credit refunded.

Item 2 updates an implementation clause.

Item 3 provides that the eligible housing business tax credit is limited to 10 percent of \$120,000 for each home or unit of a multiple dwelling prior to January 1, 2001, and is limited to 10 percent of \$140,000 for each home or unit of a multiple dwelling effective January 1, 2001.

\*No rate provided to the Department by the Municipal

2001 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

<u>CO. #</u>	<u>COMPANY</u>	<u>REPLACE- MENT TAX RATE</u>
5340	Wayland Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00000000
5275	Lamoni Municipal Gas	0.00292683
5281	Manilla Municipal Gas	0.01596357
5283	Manning Municipal Gas	0.02752596
5306	Osage Municipal Gas	0.00907736
5241	Corning Municipal Gas	0.00000000
5238	Coon Rapids Municipal Gas	0.00211177
5344	West Bend Municipal Gas	0.04300013
5317	Rock Rapids Municipal Gas	0.00764675
5215	Brighton Gas	0.00000000
5021	Bedford Municipal Gas	0.11221178
5022	City of Bloomfield	0.05280448
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.01107949

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

Item 4 updates an implementation clause.

The proposed amendments 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 these amendments 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 these proposed amendments 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 January 28, 2002, 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 small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 25, 2002. 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 convey their views orally 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 January 18, 2002.

These amendments are intended to implement Iowa Code chapters 15 and 15E as amended by 2000 Iowa Acts, chapter 1213, and 2001 Iowa Acts, House Files 349 and 716.

The following amendments are proposed.

**ITEM 1.** Amend subrule **42.2(10)** by adopting the following **new** unnumbered paragraphs:

For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return, and whose project primarily involves the production of ethanol.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred.

For value-added agricultural projects involving ethanol, for cooperatives that are not required to file an Iowa income tax return because they are exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See subrule 52.10(4) for examples illustrating how this subrule is applied.

**ITEM 2.** Amend rule **701—42.2(422)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections ~~section 15.333 as amended by 2000 Iowa Acts, chapter 1213, section 1 and 2001 Iowa Acts, House File 716, section 1, and Iowa Code sections 422.10, 422.11A, 422.12 and 422.12B.~~

**ITEM 3.** Amend rule **701—42.13(15E)** by adopting the following **new** unnumbered paragraph:

Prior to January 1, 2001, the tax credit cannot exceed 10 percent of \$120,000 for each home or individual unit in a multiple dwelling unit building. Effective January 1, 2001, the tax credit cannot exceed 10 percent of \$140,000 for each home or individual unit in a multiple dwelling unit building.

**ITEM 4.** Amend rule **701—42.13(15E)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, chapter 1179 Code section 15E.193B as amended by 2001 Iowa Acts, House File 349.~~

**ARC 1209B****STATE PUBLIC DEFENDER[493]****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 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 1, "Administration," Chapter 2, "Petitions for Rule Making," and Chapter 4, "Public Records and Fair Information Practices"; adopt new Chapter 6, "Uniform Waiver and Variance Rules"; adopt new Chapter 7, "Definitions;" rescind Chapter 10, "Contracts for Indigent Defense Services," and adopt new Chapter 10, "Eligibility Guidelines for Court-Appointed Counsel"; rescind Chapter 11, "Indigent Defense Contracts," and adopt new Chapter 11, "Attorney Fee Contracts"; rescind Chapter 12, "Claims for Indigent Defense Legal Services," and adopt new Chapter 12, "Claims for Indigent Defense Services"; and rescind Chapter 13, "Court-Appointed Counsel—Eligibility Guidelines and Repayment," Iowa Administrative Code.

These proposed amendments simplify and clarify existing rules and modify rules to reflect current practice. The proposed amendments also provide for a manner in which waivers and variances from the rules might be obtained.

Interested persons may make written comments or suggestions on the proposed amendments on or before January 18, 2002. Written materials should be addressed to the State Public Defender, Lucas State Office Building, 321 East

## STATE PUBLIC DEFENDER[493](cont'd)

12th Street, Des Moines, Iowa 50319-0087, faxed to (515) 281-7289, or E-mailed to [msmith@spd.state.ia.us](mailto:msmith@spd.state.ia.us).

Also, there will be a public hearing on January 18, 2002, at 10 a.m. in Conference Room 424 of the 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 amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 13B and 815 and Iowa Code section 17A.9A.

The following amendments are proposed.

ITEM 1. Amend 493—Chapter 1 as follows:

**493—1.1(13B) Scope.** *This chapter sets forth the organizational structure of the state public defender system and describes its purpose. See 493—Chapter 7 for definitions of terms used in this chapter.*

**493—1.1.2(13B) Function.** The position of state public defender ~~was is~~ established by Iowa Code chapter 13B. The state public defender is charged with the supervision of the operation of the state public defender system and with the coordination of the provision of legal defense representation of indigent persons in the state of Iowa.

**493—1.2(13B) Definitions.** As used in these rules, unless the context otherwise requires:

“Indigent” means a person who has been determined by the court to be unable to employ legal counsel without prejudicing that person’s financial ability to provide economic necessities for the person or the person’s dependent family.

“Local public defender” means an attorney located in a trial division office in the state public defender system who performs the duties outlined in Iowa Code section 13B.9.

“State public defender” means the state public defender appointed pursuant to Iowa Code chapter 13B.

“State public defender system” means a system for providing defense services to every jurisdiction within the state by means of a centrally administered organization having a full-time staff.

**493—1.3(13B) Overall organization and method of operations.**

**1.3(1) State public defender system.** The state public defender system is administered by the state public defender. The system consists of ~~three~~ four divisions: an administrative division, a trial division, and an appellate division *and the civil commitment unit.*

**1.3(2) Types of cases.** Based on statutes and appropriate case law, the state public defender system provides representation for persons found to be indigent in the following types of cases:

- a. Felonies;
- b. Misdemeanors, if there exists a potential for jail sentence;
- c. Juvenile matters, including delinquency petitions, termination of parental rights in which the public defender may represent either the parent or the child, child in need of assistance (CINA) proceedings, judicial bypass proceedings, and related matters;
- d. Probation and parole revocation cases; and
- e. Other matters authorized by law.

**1.3(3) State public defender.** The state public defender is appointed by the governor, subject to confirmation by the senate. The state public defender is the chief administrative officer of the state public defender system and in that capacity coordinates the legal representation of indigent clients in criminal, juvenile and related cases in Iowa ~~where the program is in effect.~~ The duties of the state public defender include, but are not limited to:

- a. Supervising the operations of the local public defender offices;
- b. Acting as chief legal officer of the state public defender system;
- c. Preparing and submitting the annual budget, personnel and employment policies, and preparing an annual report of the activities of the office;
- d. Determining locations for establishing future local public defender offices;
- e. Coordinating the provision of legal representation of all indigents under arrest or charged with a crime, on appeal in criminal cases, or in a proceeding to obtain postconviction relief when ordered to do so by the court, *against whom a contempt action is pending, in proceedings under Iowa Code chapter 229A, in juvenile cases under Iowa Code chapter 232, or in probation or parole violations under Iowa Code chapter 908;*
- f. ~~Designating to the court in each county served by a public defender office which local defender offices shall receive orders of appointment for cases~~ *Filing with the clerk of court in each county served by a public defender a designation of which local public defender office shall receive notice of appointment of cases;*
- g. Contracting with licensed attorneys in the state to provide legal services to indigent persons where there is no local public defender available to provide such services; and
- h. Reviewing claims for indigent defense services and costs, ~~filing objections and attending participating in hearings regarding claims the state public defender determines to be excessive.~~

**1.3(4) Administrative division.** The administrative division carries out all the duties of the state public defender including, but not limited to: budget preparation, processing claims for payment of public defender-related costs and expenses, coordinating hiring and disciplinary matters, maintaining statistics regarding case management and handling of cases, and all other administrative matters.

**1.3(5) Trial division.** The trial division provides legal representation at the trial level to indigent persons charged with adult crimes or in juvenile matters in counties where local public defender services are provided.

~~Trial~~ *The trial division offices are located in the following regions: the Sioux City area; the Council Bluffs area; the Mason City area; the Waterloo area; the Ames/Nevada area; the Des Moines area; the Cedar Rapids/Iowa City area; the Dubuque area; the Burlington area; and the Fort Madison/Keokuk area consists of independent local offices and branch offices. Each independent local office is under the direct supervision of a local public defender. A local public defender may supervise a branch office. If so, the branch office may be considered part of the local office.*

**1.3(6) Appellate division.** The appellate division is administered by the state appellate defender who reports directly to the state public defender. The appellate division provides legal representation to indigent clients in posttrial matters in the appellate courts of the state of Iowa, ~~regardless of whether or not the indigent client was represented on the~~

## STATE PUBLIC DEFENDER[493](cont'd)

~~county level by a local public defender or by privately appointed counsel.~~

1.3(7) *Civil commitment unit. The civil commitment unit provides legal representation to indigents in proceedings under Iowa Code chapter 229A.*

**493—1.4(13B) Indigent defense advisory commission.** ~~Rescinded IAB 2/12/97, effective 1/21/97. The indigent defense advisory commission advises and makes recommendations to the legislature and the state public defender regarding the hourly rates paid to court-appointed counsel and per-fee limitations.~~

1.4(1) *The commission consists of five appointed members. The state public defender shall serve as an ex officio member of the commission and shall serve as the nonvoting chair of the commission.*

1.4(2) *The commission members are entitled to receive reimbursement for actual expenses incurred in the performance of their duties on the commission.*

1.4(3) *The commission files a written report with the governor and general assembly every three years. The first report is due on January 1, 2003.*

**493—1.5(13B) Information.** Information concerning the office of the state public defender or the state public defender system may be obtained by contacting the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; or by telephoning telephone (515) 242-6158 or fax (515)281-7289. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday, excluding state holidays. *The state public defender's Web site address is [www.spd.state.ia.us](http://www.spd.state.ia.us).*

ITEM 2. Amend rule 493—2.3(17A) as follows:

**493—2.3(17A) Inquiries.** Inquiries concerning the status of a petition for rule making may be made to the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087; telephone (515)242-6158; E-mail [spd@spd.state.ia.us](mailto:spd@spd.state.ia.us).

ITEM 3. Amend paragraph 4.13(2)“f” as follows:

f. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122.11, the rules of evidence, the Code of Professional Responsibility, and case law. *Attorney work product includes an itemization of work performed on an interim indigent defense fee claim form or claims resulting from a mistrial.*

ITEM 4. Amend rule 493—4.14(17A,22) as follows:

**493—4.14(22) Personally identifiable information.** The state public defender maintains systems of records which contain personally identifiable information.

4.14(1) By authority of Iowa Code chapter 13B, the appellate defender division maintains information and records relating to criminal and postconviction relief cases that are being appealed. Records contain names and identifying numbers of persons involved in these cases ~~and are maintained in paper files~~. Case information is ~~not~~ stored in a data processing system and ~~cannot~~ may be compared with information in any data processing system. By authority of Iowa Code section 910A.13, the names of child victims shall not be disclosed. Presentence investigation reports in the possession of the appellate defender are confidential records pursuant to Iowa Code section 901.4.

4.14(2) No change.

4.14(3) **Contracts.** Contractual agreements are maintained by the state public defender. These records contain personally identifiable information when the agreement is with a specific individual. In those instances, the records include the name, address, and social security number of the contracting attorney. Other information in these records may include the proposal of the contracting attorney, budget figures, correspondence, and business information. Personally identifiable information is ~~not~~ contained in a data processing system *and may be compared with information in any data processing system.*

4.14(4) No change.

ITEM 5. Adopt the following **new** chapter:

## CHAPTER 6

## UNIFORM WAIVER AND VARIANCE RULES

**493—6.1(13B,17A) Applicability.** This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the state public defender. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the state public defender.

**493—6.2(13B,17A) Interpretive rules.** This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the state public defender does not possess delegated authority to bind the courts to any extent with its definition.

**493—6.3(13B,17A) Compliance with statute.** The state public defender shall not grant a petition for waiver or variance from a rule unless a statute or other provision of law has delegated authority to the state public defender sufficient to justify that action and the waiver or variance is consistent with the statute or other provision of law. No waiver or variance may be granted from a requirement that is imposed by statute, unless the statute itself specifically authorizes that action. Any waiver or variance must be consistent with statute.

**493—6.4(13B,17A) Criteria for waiver or variance.** At the sole discretion of the state public defender, the state public defender may issue an order, in response to a completed petition or on the state public defender's own motion, granting a waiver or variance from a rule adopted by the state public defender, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons if the state public defender finds based on clear and convincing evidence that:

1. The application of the rule to the petitioner would pose an undue hardship on the person or class of persons for whom the waiver or variance is requested;

2. The waiver or variance from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person;

3. The provisions of a rule subject to a petition for a waiver or variance are not specifically mandated by statute or another provision of law; and

4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

**493—6.5(13B,17A) Filing of petition.** A petition for a waiver or variance must be submitted in writing to the State Public Defender, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0087. If the petition relates to a pending contested case, the petition shall also be filed in the contested case proceeding.

## STATE PUBLIC DEFENDER[493](cont'd)

**493—6.6(13B,17A) Content of petition.** A petition for waiver or variance shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver or variance is being requested and the case number of any related contested case.

2. A description and citation of the specific rule from which a waiver or variance is requested.

3. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.

4. The relevant facts that the petitioner believes would justify a waiver or variance. 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 or variance.

5. A history of any prior contacts between the state public defender and the petitioner relating to the regulated activity, representation or other assigned function of the state public defender that would be affected by the proposed waiver or variance, including a description of each regulated activity, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, representation or other assigned function of the state public defender within the last five years.

6. Any information known to the requester regarding the state public defender's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question or which might be affected by the granting of a waiver or variance.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.

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

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver or variance.

**493—6.7(13B,17A) Additional information.** Prior to issuing an order granting or denying a waiver or variance, the state public defender 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 state public defender may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the state public defender or state public defender's designee.

**493—6.8(13B,17A) Notice.** The state public defender shall acknowledge a petition upon receipt. The state public defender shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the state public defender may give notice to other persons. To accomplish this notice provision, the state public defender 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 state public defender attesting that notice has been provided.

**493—6.9(13B,17A) 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 or variance of a rule filed within a contested case and shall otherwise apply to agency proceedings for a waiver or variance only when the state public defender so provides by rule or order or is required to do so by statute.

**493—6.10(13B,17A) Ruling.** An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

**6.10(1) State public defender discretion.** The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the state public defender upon consideration of all relevant factors.

**6.10(2) Burden of persuasion.** The petitioner has the burden of persuasion when a petition is filed for a waiver or variance from a state public defender rule. The standard of proof is clear and convincing evidence.

**6.10(3) Special waiver or variance rules not precluded.** This chapter shall not preclude the state public defender from granting waivers or variances in other contexts or on the basis of other standards if a statute authorizes the state public defender to do so and the state public defender deems it appropriate to do so.

**6.10(4) Administrative deadlines.** When the rule from which a waiver or variance is sought establishes administrative deadlines, the state public defender shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all persons similarly situated.

**6.10(5) Conditions.** The state public defender may condition the granting of the waiver or variance on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question through alternative means and in compliance with the following provisions:

a. Each petition for a waiver or variance shall be evaluated by the state public defender based on the unique, individual circumstances set out in the petition;

b. A waiver or variance, if granted, shall be drafted by the state public defender so as to provide the narrowest exception possible to the provisions of the rule;

c. The state public defender may place on a waiver or variance a condition that the state public defender finds desirable to protect the public health, safety, and welfare;

d. A waiver or variance shall not be permanent, unless the petitioner can show that a temporary waiver or variance would be impracticable; and

e. If a temporary waiver or variance is granted, there is no automatic right to renewal. At the sole discretion of the state public defender, a waiver or variance may be renewed if the state public defender finds that all of the factors set out in rule 6.4(13B,17A) remain valid.

**6.10(6) Time for ruling.** The state public defender shall grant or deny a petition for a waiver or variance 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 state public defender has the discretion to wait until the contested case is resolved before entering an order on the petition for waiver or variance.

**6.10(7) When deemed denied.** Failure of the state public defender to grant or deny a petition within the required time

STATE PUBLIC DEFENDER[493](cont'd)

period shall be deemed a denial of that petition by the state public defender.

6.10(8) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

493—6.11(13B,17A) Public availability. Subject to the provisions of Iowa Code section 17A.3(1)“e,” the state public defender shall maintain a record of all orders granting or denying waivers and variances under this chapter. All final rulings in response to requests for waivers or variances shall be indexed and available to members of the public at the state public defender’s office.

Twice each year the state public defender must prepare a report that:

1. Identifies the rules for which a waiver or variance has been granted or denied;
2. Identifies the number of times a waiver or variance was granted or denied for each rule;
3. Includes a citation to the statutory provisions implemented by these rules; and
4. Includes a general summary of the reasons justifying the state public defender’s actions.

493—6.12(13B,17A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request is based are not true or if material facts have been withheld. The state public defender may at any time cancel a waiver or variance upon appropriate notice and hearing if the state public defender finds that the facts as stated in the request are not true, material facts have been withheld, the alternative means of compliance provided in the waiver or variance have failed to achieve the objectives of the statute, or the requester has failed to comply with the conditions of the order.

493—6.13(13B,17A) Violations. Violation of conditions in the waiver or variance approval is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

493—6.14(13B,17A) Defense. After the state public defender issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

493—6.15(13B,17A) Appeals. Any request for an appeal from a decision granting or denying a waiver or variance shall be in accordance with the procedures provided in Iowa Code chapter 17A and state public defender rules. An appeal shall be taken within 30 days of the issuance of the ruling in response to the request unless a contrary time is provided by rule or statute.

493—6.16(13B,17A) Sample petition for waiver or variance.

BEFORE THE STATE PUBLIC DEFENDER

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).



No. \_\_\_\_\_

PETITION FOR WAIVER

Include the following information in the petition for waiver where applicable and known:

1. Provide the petitioner’s (the person who is asking for the waiver or variance) name, address and telephone number.

2. Describe and cite the specific rule from which a waiver or variance is requested.

3. Describe the specific waiver or variance requested; include the exact scope and time period that the waiver or variance will extend.

4. Explain the important facts that the petitioner believes justify the waiver or variance. Include in your explanation (a) why application of the rule would pose an undue hardship to the petitioner; (b) why granting the waiver or variance would not prejudice the substantial legal rights of any person; (c) state whether the provisions of a rule subject to this petition are specifically mandated by statute or another provision of law; and (d) state whether public health, safety or welfare will be affected if the requested waiver or variance is granted.

5. Provide history of prior contacts between the state public defender and the petitioner relating to the regulated activity, license, audit, investigation, inspection or representation that would be affected by the waiver or variance. In that history, include a description of each affected regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity, license, appeal, hearing, audit, investigation, inspection, representation or other assigned function of the state public defender within the last five years.

6. Provide information known to the petitioner regarding the state public defender’s treatment of similar cases.

7. Provide 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 or variance.

8. Provide the name, address and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.

9. Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the state public defender with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

\_\_\_\_\_  
Petitioner’s signature

\_\_\_\_\_  
Date

These rules are intended to implement Iowa Code section 17A.9A.

ITEM 6. Adopt the following **new** chapter:

CHAPTER 7  
DEFINITIONS

493—7.1(13B,815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

“Affidavit of financial status” means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

“Applicant” means a person requesting legal assistance by an appointed attorney.

“Appointed attorney” means an attorney appointed by the court to represent an indigent person.



## STATE PUBLIC DEFENDER[493](cont'd)

"Assets" means all resources or possessions of the applicant.

"Attorney" means an individual licensed to practice law in Iowa.

"Attorney time" means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case. Attorney time does not include time spent performing clerical activities.

"Case" means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.

"Child" or "juvenile" means a person so defined in Iowa Code chapter 232.

"Claimant" means an appointed attorney, a county, or other person authorized by Iowa law and the rules of criminal procedure to make application to the state for reimbursement of attorney fees, depositions, and other expenses incurred from the representation of an indigent person.

"Clerical activities" means activities including, but not limited to, opening files, closing files, making photocopies, opening mail, sending mail, sending a fax, picking up or delivering documents, scheduling, or billing.

"Contract" means a written agreement between the state public defender and an attorney.

"Court-appointed attorney" means an attorney appointed by the court to represent an indigent person whether or not the attorney has a contract with the state public defender.

"Date of service" means, for adult fee claims, the date on which the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date warrant was issued for the client, or the date of the attorney's withdrawal from the case. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims, date of service means the last date on the itemization. For juvenile claims, date of service means the date of the dispositional hearing or most recent review hearing, the date of the attorney's withdrawal, or the date of dismissal. For noncontract appellate claims, date of service means the date on which the case is disposed of or dismissed. For contract attorneys, date of service means the date of filing of the page-proof brief or final brief. For claims filed as a result of a notice of action letter, date of service means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, date of service means the date of the order.

"Department" means the department of inspections and appeals.

"Family" or "household" means the applicant, applicant's spouse, including a common-law spouse, and applicant's children living in the same residence.

"Fee limitations" means the fee limitations established by the state public defender for specific classes of cases.

"Fees" means the consideration paid to an appointed attorney to represent an indigent.

"Good cause" means a sound, effective and truthful reason. Good cause is something more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause.

"Governmental assistance program" means any public assistance program from which a person is receiving assistance.

"Income" means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance pro-

grams; tax refunds; prize winnings; pensions; investments; and money received from any other source.

"In-court time" means time spent by an appointed attorney engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings. In-court time does not include time spent at foster care review board hearings, staffings or any other meetings with other state agencies.

"Indigent" means a person entitled to an appointed attorney pursuant to Iowa Code section 815.9.

"Juvenile proceeding" means a case in juvenile court under Iowa Code chapter 232 wherein the attorney acts as guardian ad litem for the child in interest or provides legal counsel for the child, parent, guardian or custodian.

"Liabilities" means all living, business or farming expenses and fixed debts.

"Local public defender" means an attorney in the trial division of the state public defender system who performs the duties outlined in Iowa Code section 13B.9.

"Notice of action letter" means a letter sent by the state public defender to notify the claimant that the claimant's fees or expenses were reduced.

"Out-of-court time" means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, reviewing records, and other productive case-related time that is not in-court time or travel time. Out-of-court time does not include clerical activities.

"Paralegal time" means time spent preparing pleadings and motions, reviewing transcripts, performing legal research, interviewing witnesses and attending staffings in juvenile cases. Paralegal time does not include clerical activities.

"Person" means an individual, corporation, limited liability company, government or governmental subdivision or association, or any legal entity.

"Poverty income guidelines" means the annual poverty income guidelines established by the U.S. Department of Health and Human Services (DHHS).

"Rules of criminal procedure" means the rules prescribed by the supreme court which govern criminal actions and proceedings in all courts in the state.

"State public defender" means the state public defender appointed pursuant to Iowa Code chapter 13B.

"State public defender system" means a system for providing defense services within the state by means of a centrally administered organization having a full-time staff.

"Timely claim" means a claim processed prior to August 31 in the year following the fiscal year of the date of service.

"Travel time" means the reasonable and necessary time spent by the attorney in automobile travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a criminal case if the place of detention is other than the county seat of the county in which the crime occurred;



## STATE PUBLIC DEFENDER[493](cont'd)

5. To and from the location of the placement of a child in a juvenile case if the attorney is required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;

6. To and from the location of the placement of a child in a juvenile case if required by statute and court order to visit the placement and the placement is outside the state of Iowa;

7. To and from a court of appeals or supreme court argument; or

8. Other travel for which authorization is obtained from the state public defender.

"Written" as used in these rules may include electronically transmitted communication to the extent permitted by rules of the state public defender.

This rule is intended to implement Iowa Code chapters 13B and 815.

ITEM 7. Rescind 493—Chapter 10 and adopt the following new chapter in lieu thereof:

CHAPTER 10  
ELIGIBILITY GUIDELINES  
FOR COURT-APPOINTED COUNSEL

**493—10.1(815) Eligibility.** The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance.

**493—10.2(815) Income guidelines.** Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

**493—10.3(815) Designation of eligibility reviewer.** The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of a person for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

**493—10.4(815) Application.** Any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation before being provided legal representation. The applicant should provide information on an affidavit of financial status. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

**10.4(1) Affidavit.** The applicant shall provide information required by the affidavit of financial status under penalty of perjury.

**10.4(2) Family.** The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

**10.4(3) Income.** The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

**10.4(4) Household income.** The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse need not be included if the spouse is the alleged victim of the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

**10.4(5) Assets.** The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

**10.4(6) Liabilities.** The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

**10.4(7) Nature of proceedings.** In a criminal case, the affidavit of financial status shall contain a statement of the charge(s) against the defendant. In a juvenile or civil case, a statement of the nature of the proceedings shall be included.

**10.4(8) Child applicant.** If the applicant is a child, the child's parent, guardian or custodian shall complete the affidavit of financial status. The affidavit of financial status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

**10.4(9) Additional information.** The applicant shall provide such additional information as may be required by the court to determine applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the affidavit of financial status to reflect changes in the information previously provided.

**493—10.5(815) Evaluation of affidavit of financial status.** In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

**10.5(1) Family size.** The total size of the applicant's household shall be used to determine eligibility for appointed counsel.

**10.5(2) Household income.** The applicant's income, or the combined income of the applicant and the applicant's spouse if they are living in the same residence, shall be used in determining an applicant's household income, subject to the following:

a. The income of the applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In a juvenile proceeding, the income of both parents shall be considered in determining whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

**10.5(3) DHHS poverty income guidelines.** The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is 125 percent or less of the poverty level; between 125 percent and 200 percent of the poverty level; or 200 percent or greater of the poverty level.

**10.5(4) Income 125 percent or less of the poverty level.** If the applicant's household income is 125 percent or less of the poverty level, the applicant is entitled to appointed counsel unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

**10.5(5) Income between 125 percent and 200 percent of the poverty level.** If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed coun-

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sel unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(6) Income 200 percent or greater of the poverty level. If the applicant's household income is 200 percent or greater of the poverty level, the applicant is not entitled to appointed counsel unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

10.5(7) Applicability to juvenile cases. In evaluating

whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—10.6(815) Payment procedures.

10.6(1) Payment to clerk. An applicant who has been determined eligible for appointed counsel shall pay to the office of the clerk of the district court any sums ordered by the court. This order for payment may be entered during or following the pendency of the action.

10.6(2) Wage assignments. If the applicant is employed, the applicant shall execute an assignment of applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of the district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

493—10.7(815) Forms. The following forms are recommended for use in carrying out these rules.

10.7(1) Adult affidavit of financial status form.

In the Iowa District Court for \_\_\_\_\_ County

State of Iowa, or

\_\_\_\_\_,  
Plaintiff/Petitioner

: No. \_\_\_\_\_

vs.

: \_\_\_\_\_ Criminal  
: \_\_\_\_\_ Civil

\_\_\_\_\_,  
Defendant/Respondent

Financial Affidavit/Application for Appointment of Counsel/Order

Name: \_\_\_\_\_ Social Security No. \_\_\_\_\_ D.O.B \_\_\_\_\_

Address: \_\_\_\_\_ Phone \_\_\_\_\_

Street City State Zip

Pending charges \_\_\_\_\_ Jail \_\_\_yes \_\_\_no

Do you have a job? \_\_\_\_\_ Who do you work for? \_\_\_\_\_ Full-time Part-time

How much do you earn before taxes or deductions? \_\_\_\_\_ per hr/mo/yr (Circle) Hours/Week \_\_\_\_\_

Does your spouse live with you? \_\_\_\_\_ Number of children living with you \_\_\_\_\_

Does anyone who lives with you have a job? \_\_\_\_\_ How much do they earn \_\_\_\_\_ per hr/mo/yr ?

List all other income you, or anyone living with you has \_\_\_\_\_

List what you own including money in banks, vehicles, real estate, cash, or anything else worth more than \$100

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts

I understand that I may be required to repay the State for all or part of my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in financial status. I certify under penalty of perjury that the statements I make in this application are true and that I am financially unable to employ an attorney to represent me.

Date \_\_\_\_\_

Signature \_\_\_\_\_

Order

The Court finds as follows:

\_\_\_\_\_ Not eligible for court-appointed counsel.

\_\_\_\_\_ Income at or below 125% of guidelines, defendant unable to pay an attorney.

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Income between 125% and 200% of guidelines, not appointing would cause substantial hardship.

Income 200% or more of guidelines, felony charge, not appointing would cause substantial hardship.

Application is \_\_\_ denied \_\_\_ approved. \_\_\_\_\_ (\_\_\_\_\_) is appointed.

(attorney) (phone)

Date \_\_\_\_\_ Judge \_\_\_\_\_

10.7(2) Juvenile affidavit of financial status form.

In the Juvenile Court for \_\_\_\_\_ County, Iowa

In the Interest of

: Juvenile No. \_\_\_\_\_  
: \_\_\_\_\_  
:

Child/children \_\_\_\_\_

Financial Affidavit of Parent

Application for Appointment of Counsel for \_\_\_ Child \_\_\_ Parent  
Order

Name: \_\_\_\_\_ Social Security No. \_\_\_\_\_ D.O.B. \_\_\_\_\_

Address: \_\_\_\_\_ Phone \_\_\_\_\_

Street City State Zip

Case: CINA \_\_\_ TPR \_\_\_ Other \_\_\_\_\_ Relationship to Child: Parent \_\_\_ Other \_\_\_\_\_

Do you have a job? \_\_\_\_\_ Who do you work for? \_\_\_\_\_ Full-time Part-time

How much do you earn before taxes or deductions? \_\_\_\_\_ per hr/mo/yr (Circle) Hours/Week \_\_\_\_\_

Does your spouse live with you? \_\_\_\_\_ Number of children living with you \_\_\_\_\_

Does your spouse have a job? \_\_\_\_\_ How much does your spouse earn \_\_\_\_\_ per hr/mo/yr ?

List all other income you and/or your spouse has \_\_\_\_\_

List what you own including money in banks, vehicles, real estate, cash, or anything else worth more than \$100

List amounts you pay monthly for mortgages, rent, car loans, credit cards, child support, any other debts

I understand that I may be required to repay the State for all or part of my attorney fees and costs and those of my child, I may be required to sign a wage assignment, and I must report any changes in financial status. I certify under penalty of perjury that the statements I make in this application are true and that I am financially unable to employ an attorney to represent me.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Order

The Court finds as follows:

\_\_\_ Not eligible for court-appointed counsel.

\_\_\_ Child eligible for court-appointed counsel, parent may be responsible for attorney fees.

\_\_\_ Applicant eligible for court-appointed counsel, not appointing counsel would constitute substantial hardship considering income, assets, and nature of the proceedings.

Application is \_\_\_ denied \_\_\_ approved. \_\_\_\_\_ (\_\_\_\_\_) is appointed.

(attorney) (phone)

Date \_\_\_\_\_ Judge \_\_\_\_\_

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10.7(3) Wage assignment form.

In the Iowa District Court for \_\_\_\_\_ County

STATE OF IOWA,
Plaintiff, \_\_\_\_\_,
vs.
Defendant \_\_\_\_\_
NO. \_\_\_\_\_

ASSIGNMENT OF WAGES

I, \_\_\_\_\_, state to the Court as follows:

- 1. I am the defendant in the above-captioned matter.
2. An attorney was appointed to represent me in the above-captioned matter.
3. I understand that under Iowa Code Section 815.9 I must pay all costs and fees incurred for legal assistance to the clerk of court.
4. I am not able to pay for all of the costs and fees incurred for legal assistance in the above-captioned matter within the time specified in Iowa Code §815.9.

5. I agree to assign my wages to pay said costs and fees. I am currently employed by

Name of Employer \_\_\_\_\_
Address of Employer \_\_\_\_\_

Employer Phone No. \_\_\_\_\_ Street City State Zip

6. I will notify the clerk of court within 10 days if I change employers.

Date \_\_\_\_\_ Signature \_\_\_\_\_

JUDGMENT AND ORDER FOR ASSIGNMENT OF INCOME

The matter of payment of the costs and fees incurred for defendant's legal assistance in the above-captioned matter comes before the court pursuant to Iowa Code Sections 815.9(8) and (9). The Court finds that the costs and fees incurred total \$ \_\_\_\_\_; that judgment for costs and fees to be paid by defendant should be entered in the amount of \$ \_\_\_\_\_; and that defendant agrees to an assignment of his/her income to pay this amount.

IT IS THEREFORE ORDERED that judgment is entered against defendant in the amount of \$ \_\_\_\_\_ for costs and fees incurred for defendant's legal assistance in the above-captioned matter.

IT IS FURTHER ORDERED that an assignment of income is adjusted and entered against the defendant \_\_\_\_\_ to pay the costs and fees incurred for defendant's legal assistance.

IT IS FURTHER ORDERED that defendant's employer/income provider, \_\_\_\_\_, shall deduct from the defendant's income the sum of \$ \_\_\_\_\_ per month as payment for the costs and fees incurred for defendant's legal assistance.

Such deduction shall commence ten (10) working days after service of a copy of this Order upon the employer/income provider. The employer/income provider shall deliver a copy of this Order to the defendant \_\_\_\_\_ within one working day after receipt of the Order.

The employer/income provider shall transmit a check for the amount deducted to the following address:

Clerk of Court, \_\_\_\_\_ County Courthouse

All sums remitted shall be sent to the above-mentioned location within ten (10) days from the date the defendant is paid and shall be labeled to identify the defendant by name and shall be further labeled by adding the following case number \_\_\_\_\_.

IT IS FURTHER ORDERED that, should the amount hereby assigned exceed fifty percent (50%) of the defendant's disposable net earnings in a given period, the employer/income provider shall withhold only fifty percent (50%) of the defendant's net earnings for that pay period, and shall transmit that amount to the clerk of court as ordered above.

IT IS FURTHER ORDERED that this assignment shall be binding on subsequent employers/income providers of the defendant.

IT IS FURTHER ORDERED that this order for income assignment shall remain in full force and effect until the judgment is paid in full, or until further order of this court.

## STATE PUBLIC DEFENDER[493](cont'd)

The employer/income provider shall promptly notify the court when the defendant's employment terminates and shall provide the court with the defendant's last known address and the name and address of the defendant's new employer, if known.

IT IS FURTHER ORDERED that the employer/income provider maintain a record or accounting of amounts withheld under this Order and make the record available to defendant upon request.

Dated \_\_\_\_\_

JUDGE, \_\_\_\_\_ JUDICIAL DISTRICT OF IOWA

These rules are intended to implement Iowa Code section 815.9.

ITEM 8. Rescind 493—Chapter 11 and adopt the following new chapter in lieu thereof:

CHAPTER 11  
ATTORNEY FEE CONTRACTS

**493—11.1(13B) Scope.** This chapter sets forth the rules for private attorneys entering into contracts for indigent defense legal services with the state public defender. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—11.2(13B) Contracts.** An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

**11.2(1)** To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa.

**11.2(2)** A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at [www.spd.state.ia.us](http://www.spd.state.ia.us).

**493—11.3(13B) Notice of proposed contract.** The state public defender will give notice to attorneys of the availability of contracts for indigent defense legal services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

**493—11.4(13B) Contract approval or rejection.**

**11.4(1)** The state public defender may confer with judges, attorneys and others with knowledge of a potential contracting attorney's competence, effectiveness, trustworthiness, and ability to provide services to eligible individuals. The information received may be taken into consideration in determining whether to enter into a contract with the potential contracting attorney.

**11.4(2)** The state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to determine the attorney's qualifications and ability to perform the conditions of the contract.

**11.4(3)** The state public defender may hold discussions with, or otherwise obtain information from, a potential contracting attorney to establish the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

**11.4(4)** The state public defender may decline to award a contract to a proposed contracting attorney if the state public defender receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason. The state public defender shall give written notice of this action to the attorney. The attorney may seek reconsideration of this decision in the manner prescribed in rule 11.7(13B).

**11.4(5)** Nothing contained in this rule shall obligate the state public defender to enter into any contract if the state

public defender determines that it is not in the best interests of the state to enter into such contract.

**493—11.5(13B) Contract elements.**

**11.5(1)** A contract with a private attorney may be awarded for the provision of trial or appellate legal services to indigents in cases as determined by the state public defender.

**11.5(2)** A contract can only be in force and effect when signed by the contracting attorney and approved by the state public defender.

**11.5(3)** The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

**11.5(4)** Once a contract has been awarded, the state public defender shall notify the clerks of court of the counties in which the contracting attorney has agreed to provide services.

**11.5(5)** A contract with a private attorney should cover, but not be limited to, the following subjects:

- a. The categories of cases in which the attorney is to provide services;
- b. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;
- c. Identification of the attorney(s) who will perform legal representation under the contract;
- d. A prohibition against assignment of the obligations undertaken pursuant to the contract, including a prohibition against substitution of counsel without prior consent of the state public defender or the court;
- e. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;
- f. A description of the compensation to be paid and the manner of payment;
- g. A description of any expenses, such as support services, investigative services and expert witness expenses, which may be provided under the contract;
- h. A description of the record-keeping and reporting requirements under the contract;
- i. A description of the manner in which the contract may be terminated;
- j. A description of the manner of disposition of ongoing obligations following termination.

**11.5(6)** Compensation. The attorney shall be compensated as set forth in rule 493—12.4(13B,815) for trial work and rule 493—12.5(13B,815) for appellate work.

**493—11.6(13B) Contract renewal.** Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney

## STATE PUBLIC DEFENDER[493](cont'd)

may accept the new contract by signing the contract and returning it to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may seek reconsideration of this decision in the manner prescribed in rule 11.7(13B).

**493—11.7(13B) Reconsideration.** A request for reconsideration is perfected by giving written notice of the request for reconsideration to the state public defender within ten days of receipt of notice of the action. The request for reconsideration shall state the grounds upon which the attorney challenges the action and contain any additional facts or circumstances the attorney wants the state public defender to consider. The state public defender shall then hold a hearing and may uphold, reverse or modify the prior decision. The decision following this reconsideration shall be made in writing and shall set forth all of the findings relied upon in making the decision. If an attorney remains aggrieved by the decision after the reconsideration, the attorney may seek judicial review of the decision.

These rules are intended to implement Iowa Code chapter 13B.

ITEM 9. Rescind 493—Chapter 12 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 12

## CLAIMS FOR INDIGENT DEFENSE SERVICES

**493—12.1(13B,815) Scope.** This chapter sets forth the rules for submission, payment and court review of indigent defense fee claims. See 493—Chapter 7 for definitions of terms used in this chapter.

**493—12.2(13B,815) Submission and payment of attorney claims.**

**12.2(1)** Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

a. A completed fee claim on a form promulgated by the state public defender. Adult fee claims must be submitted on an Indigent Defense Adult Fee Claim Form. Juvenile fee claims must be submitted on an Indigent Defense Juvenile Fee Claim Form. Appellate fee claims must be submitted on an Indigent Defense Appellate Fee Claim Form. The claim forms may be obtained from the clerk of court.

b. A copy of the signed order appointing the attorney to the case.

(1) The appointment order must either be dated by the court or have a legible file-stamp.

(2) Claims for probation violations, parole violations and contempt actions are considered new cases, and the attorney must submit a copy of an appointment order for these claims.

(3) An appointment order is not necessary if the attorney previously submitted an indigent defense fee claim and was paid on the case.

(4) An appointment order is not necessary if the state public defender determines the appointment order is unnecessary.

c. A copy of any application and court order authorizing the attorney to exceed the fee limitations along with a copy of any order that affects the amount to be paid.

d. An itemization detailing all work performed on the case for which the attorney seeks compensation.

(1) The itemization must separately state the date and amount of time spent on each activity. Time should be recorded in tenths of an hour. Time listed in hundredths of an hour will be reduced to the nearest tenth of an hour.

(2) The itemization shall separately designate time claimed for in-court time, out-of-court time, paralegal time and travel time.

(3) The itemization must be in chronological order.

**12.2(2)** The state public defender shall forward claims to the department for processing and payment only after all reporting requirements have been complied with and the claim has been approved by the state public defender.

**12.2(3)** Processing of claims that are not timely claims may be delayed.

**12.2(4)** Claims for compensation in excess of applicable rates are not payable under the attorney's appointment and will be reduced.

**12.2(5)** Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment, and that portion will be denied.

**12.2(6)** Claims for services that contain charges that are either not reasonable or not appropriate are not payable under the attorney's appointment and will be denied.

**12.2(7)** Claims for clerical activities, overhead, preparation of the fee claim form and itemization of services, or preparation of motion and order and any subsequent hearing for review of an attorney fee claim are not payable under the attorney's appointment and will be denied.

**493—12.3(13B,815) Interim claims.** Claims will be paid at the conclusion of the case unless one of the following applies:

**12.3(1)** Juvenile cases. An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing held in the case.

**12.3(2)** Appellate cases. A claim for work performed to date by an attorney having an appellate contract with the state public defender may be submitted in appellate cases after filing of the attorney's proof brief. A subsequent claim may be submitted at the conclusion of the case.

**12.3(3)** Specific cases. Interim claims in Class A felony cases, Class B felony cases, cases under Iowa Code chapter 229A, and cases defined in Iowa Code section 902.12 may be submitted once every three months, with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

**12.3(4)** Change of employment. If an attorney is changing law firms, the attorney may submit an interim claim to end billing at one firm and start billing at the new firm. Both the attorney and the law firm must advise the state public defender in writing that the attorney is leaving the firm and what payments up to a specific date should be made to the law firm.

**12.3(5)** Other cases. In all other cases, claims filed prior to the conclusion of the case will not be paid except with consent of the state public defender.

**12.3(6)** Approval of interim claims. Approval of any interim claims shall not affect the right of the state public defender to review subsequent claims or the aggregate amount of the claims submitted.

**493—12.4(13B,815) Rate of compensation.** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999:

## STATE PUBLIC DEFENDER[493](cont'd)

Attorney time	Class A felonies	\$60/hour
	Class B felonies	\$55/hour
	All other cases, including all appeals	\$50/hour
Paralegal time		\$25/hour

**12.4(1)** Applicability to juvenile cases. In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney at the above-referenced rate for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

**12.4(2)** Appointments before July 1, 1999. In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is \$5 per hour less than the above rates pursuant to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.

**12.4(3)** Applicability to appellate contracts. This rule shall not apply to claims from attorneys with appellate contracts with the state public defender.

**493—12.5(13B,815) Appellate contracts.** Subject to the provisions of this rule, an attorney who has entered into a contract with the state public defender shall be paid \$1,500 for each appellate case to which the attorney is appointed. One thousand dollars is payable following submission of the attorney's proof brief; the remainder, at the conclusion of the case.

**12.5(1)** Frivolous appeals. In an appeal in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at

**493—12.6(13B,815) Fee limitations.** The state public defender establishes fee limitations for combined attorney time and paralegal time for all trial-related activities in the following particular categories of cases:

Class A felonies	\$15,000
Charges defined in Iowa Code section 902.12	\$3,500
Class B felonies	\$3,000
Class C felonies	\$1,200
Class D felonies	\$1,000
Aggravated misdemeanors	\$1,000
Serious misdemeanors	\$500
Simple misdemeanors	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A	\$10,000
Probation/parole violation/extradition	\$250
Delinquency (through disposition)	\$1,000
Child in need of assistance (CINA) (through disposition)	\$1,000
Termination of parental rights (through disposition)	\$1,500
Juvenile court review hearings (postdispositional hearings)	\$300
Judicial bypass hearings	\$150
Juvenile petition on appeal	\$500
Postconviction relief	

the greater of \$1,000 or 1/2 of the fee limitation for the conviction from which relief is sought.

the rate of \$50 per hour, with a maximum fee of \$1,000 in each case.

**12.5(2)** Juvenile cases/joinder. In a juvenile appellate case involving more than one appellant or appellee, where an attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a maximum fee of \$500 in the case.

**12.5(3)** Juvenile petition on appeal. In a juvenile case in which a petition on appeal is filed, the petition is not considered an appeal for purposes of this rule. The trial attorney does not need to obtain an appointment order to pursue the petition on appeal. The claim, through the filing of the petition on appeal, must be submitted on an Indigent Defense Juvenile Fee Claim Form. If an appellate court orders full briefing, the trial court shall appoint an attorney pursuant to Iowa Code. An attorney fee claim for services subsequent to such order must be submitted on an Indigent Defense Appellate Fee Claim Form.

**12.5(4)** Unusually complicated cases. In an appeal that is unusually complicated, the attorney may negotiate with the state public defender for a fee in excess of the fees contained in rule 12.5(13B,185). However, this rule does not require that the state public defender agree to a higher fee in any particular case. The term "unusually complicated" as used in this subrule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. A case in which an application for further review is filed is generally deemed to be "atypical" as that term is used in this rule.

**12.5(5)** Application of fee limitations. The fee limitations and procedures provided in rule 12.6(13B,815) have no application to appellate contracts.

## STATE PUBLIC DEFENDER[493](cont'd)

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four children at the same time or the incident that gave rise to the child in need of assistance action is essentially the same, the fee limitation for the attorney representing the parent is \$1,000 for all four proceedings, not \$1,000 for each one.

In an adult criminal proceeding, if an attorney is appointed to represent a client charged with four counts of forgery, the fee limitations for each charge would apply separately. If the attorney is appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations.

In a criminal case with multiple charges, the fee limitation for the more serious charge is the fee limitation for the case.

In a juvenile case in which a petition on appeal is filed, the trial attorney does not need to obtain an appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on an Indigent Defense Juvenile Fee Claim Form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Indigent Defense Appellate Fee Claim Form and is subject to the rules governing appeals.

Nothing contained in this rule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

**12.6(1)** Fee limitations/appellate cases. Except as provided in this subrule, the state public defender establishes a fee limitation of \$2,000 for combined attorney time and paralegal time for all activities in appellate cases filed with the Iowa supreme court.

a. In an appeal in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$1,000.

b. In a juvenile appellate case involving more than one appellant or appellee, where an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of \$50 per hour, with a fee limitation of \$500.

This subrule does not apply to appellate cases to which an attorney with an appellate contract with the state public defender is appointed. See rule 12.5(13B,815).

**12.6(2)** Claims in excess of fee limitations. A claim in excess of the fee limitations will not be paid unless the attorney seeks and obtains authorization from the appointing court to exceed the fee limitations prior to exceeding the fee limitations. If authorization to exceed the fee limitations is granted, payment in excess of the fee limitations shall be made only for services performed after the date of submission of the request for authorization to exceed the fee limitations.

**12.6(3)** Retroactivity of authorization. Authorization to exceed the fee limitations shall be effective only as to services performed after an application to exceed the fee limitations is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists excusing the attorney's failure to timely file the application to exceed the fee limitations.

**12.6(4)** Applicability to juvenile cases. For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to \$1,000 for the child in need of assistance case and up to \$1,500 for the termination of parental rights case.

**493—12.7(13B,815) Reimbursement for specific expenses.**

**12.7(1)** The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigations, foreign language interpreters, evaluations, and experts, if the following conditions are met:

a. The attorney obtained court approval to hire a certified shorthand reporter, investigator, foreign language interpreter, evaluator or expert prior to incurring any expenses with regard to each.

b. A copy of the application and order granting authority accompanies the claim.

c. The certified shorthand reporter, investigator, foreign language interpreter, evaluator or expert does not submit a claim for the same services.

d. The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be paid to the certified shorthand reporter, investigator, foreign language interpreter, evaluator, or expert.

e. A copy of the court order authorizing the expense and approving the dollar amount is attached to the claim.

f. In claims for services of certified shorthand reporters, investigators, foreign language interpreters, or experts, if the service provider charges for a "minimum" amount of time, the attorney determines and certifies that no other services and charges will be made by the provider for any portion of that specific time.

g. In a claim for the cost of an evaluation, the attorney will be reimbursed for the reasonable cost of an evaluation of the client to establish a defense in the case or to determine if the client is competent to stand trial. In either instance, a copy of the court order authorizing the evaluation for one of these specific purposes and an order approving the amount of the evaluation must accompany the claim form.

**12.7(2)** Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

**12.7(3)** In the case of an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs 12.7(1)"b" to "d" shall apply.

**12.7(4)** Claims for expenses that do not meet these conditions are not payable under the attorney's appointment and will be denied.

**493—12.8(13B,815) Reimbursement of other expenses.**

**12.8(1)** The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case:

a. Mileage for automobile travel at the rate of 24 cents per mile. The number of miles driven must be listed in the itemization of services or on the claim form. Other forms of transportation costs incurred by the attorney will be reimbursed with prior approval from the court.

b. Lodging when required to be away from one's home overnight for hearings and trials at the state-approved rate.



## STATE PUBLIC DEFENDER[493](cont'd)

c. The actual cost of meals, limited by the state-approved rate, is reimbursed only if the attorney is entitled to be paid for travel time for the travel associated with these meals.

d. Necessary photocopying at the attorney's office at the rate of 10 cents per copy. The number of copies made must be listed in the itemization of services or on the claim form.

e. Ordinary and necessary postage, toll calls, collect calls, and parking for the actual cost of these expenses. Toll and collect calls will be reimbursed at 10 cents per minute or the actual cost. A receipt for the actual cost must be attached to the claim form.

f. Receiving faxes in the attorney's office at the rate of 10 cents per page. There is no direct cost reimbursement for sending a fax unless there is a toll charge associated with it.

g. The actual cost of photocopying or faxing for which the attorney must pay an outside vendor. A receipt for the actual cost must be attached to the claim form.

h. Other specific expenses for which prior approval by the state public defender is obtained.

**12.8(2)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment and will be reduced or denied.

**493—12.9(13B,815) Court review.** An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

**12.9(1)** Motions for court review. Court review of the action of the state public defender is initiated by filing a motion with the appointing court requesting the review. The following conditions shall apply to all such motions:

a. The motion must be timely filed pursuant to Iowa Code section 13B.4(4) or (5). If the attorney fee claim is reduced or denied because it was excessive or not reasonable under Iowa Code section 13B.4“c,” the motion for review must be filed within 20 days of any action taken by the state public defender. If the attorney fee claim is reduced or denied for any other reason (other than excessive or not reasonable) the motion must be filed within 30 days of the action of the state public defender.

b. The motion must set forth each and every ground on which the attorney intends to rely in challenging the action of the state public defender.

c. The motion must have attached to it a complete copy of the claim, together with the notice of action that the attorney seeks to have reviewed.

d. A copy of all documents filed must be provided to the state public defender.

e. It is unnecessary for the state public defender to file any response to the motion.

**12.9(2)** Hearings. The following shall apply to hearings on motions for court review:

a. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

b. Unless the state public defender specifically indicates an intention to appear in person at the hearing, the hearing shall be conducted telephonically. The attorney requesting the review is responsible for initiating and paying for the telephone call to the state public defender. For purposes of this subrule, the state public defender may be reached at (515)242-6158.

c. The burden shall be on the attorney requesting the review.

d. The court shall not consider issues not raised in the attorney's motion.

e. The court shall issue a written ruling on the issues properly presented in the request for review.

f. If a ruling is entered allowing additional fees, the attorney must file a new Indigent Defense Fee Claim Form with the state public defender. A copy of the court's ruling must be attached to the claim form. The date of service on the claim form is the date of the court's order.

**493—12.10(13B,815) Payment errors.** If an error resulting in an overpayment or double payment of a claim is discovered, the claimant shall notify the clerk of court of the error and shall reimburse the department for the amount of the overpayment. An overpayment that is returned to the department shall be paid by check made payable to the “Treasurer, State of Iowa” and mailed to the Department of Inspections and Appeals, Indigent Defense Unit, Lucas State Office Building, Des Moines, Iowa 50319. The attorney is responsible for notifying the clerk of court of any payment error.

These rules are intended to implement Iowa Code chapters 13B and 815.

ITEM 10. Rescind **493—Chapter 13.**

**ARC 1196B**

## STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434]

### 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 17A.3, the Division on the Status of African-Americans hereby gives Notice of Intended Action to adopt new Chapter 7, “Waiver Rules,” Iowa Administrative Code.

The Governor, through Executive Order Number 11 issued on September 14, 1999, requires each agency with the authority to adopt rules, as defined in Iowa Code sections 17A.2(1) and 17A.2(10), to initiate rule-making proceedings to adopt the Uniform Waiver Rule that is outlined in the Executive Order. Executive Order Number 11 was published in the Iowa Administrative Bulletin, Volume XXII, Number Seven, dated October 6, 1999. Adoption of this new chapter will provide the agency with waiver rules.

Any interested person may make written suggestions or comments on these proposed rules on or before January 15, 2002. Such written materials should be directed to the Administrator, Division on the Status of African-Americans, Department of Human Rights, Lucas State Office Building, Second Floor, Des Moines, Iowa 50319; fax (515)281-3858.

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

The following new chapter is proposed.

## STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434](cont'd)

CHAPTER 7  
WAIVER RULES

**434—7.1(17A) Definition.** The term “waiver” as used in this chapter means a prescribed waiver or variance from a specific rule or set of rules of this division applicable only to an identified person on the basis of the particular circumstances of that person.

**434—7.2(17A) Scope of chapter.** This chapter creates generally applicable standards and a generally applicable process for granting individual waivers from rules adopted by the division in situations when no other more specifically applicable law provides for waivers. To the extent another more specific provision of law purports to govern the issuance of a waiver from a particular rule, the more specific waiver provision shall supersede this chapter with respect to any waiver from that rule.

**434—7.3(17A) Applicability.** This chapter applies only to waivers of those division rules that are within the exclusive rule-making authority of the division. This chapter shall not apply to rules that merely define the meaning of a statute, or other provisions of law or precedent, if the division does not possess statutory authority to bind a court, to any extent, with its definition.

**434—7.4(17A) Compliance with law.** The division may not issue a waiver under this chapter unless (1) the legislature has delegated authority sufficient to justify the action; and (2) the waiver is consistent with statute and other provisions of law. No waiver may be granted under this chapter from any mandatory requirement imposed by statute.

**434—7.5(17A) Criteria for a waiver.** The division may issue an order, in response to a completed petition or on its own motion, granting a waiver from a rule adopted by the division, in whole or in part, as applied to the circumstances of a specified person, if the division finds that the waiver is consistent with rules 7.3(17A) and 7.4(17A) of this chapter, that the waiver would not prejudice the substantial legal rights of any person, and either that:

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

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

**434—7.6(17A) Division discretion.** The final decision to grant or deny a waiver shall be vested in the division administrator. This decision shall be made at the discretion of the division upon consideration of relevant facts.

**434—7.7(17A) Burden of persuasion.** The burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the division should exercise its discretion to grant a waiver based upon the criteria contained in rule 7.5(17A) of this chapter.

**434—7.8(17A) Contents of petition.** A petition for a waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the entity or person for whom a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule or set of rules from which a waiver is being requested.
3. The specific waiver requested, including a description of the precise scope and operative period for which the petitioner wants the waiver to extend.
4. The relevant facts that the petitioner believes would justify a waiver. This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts represented in the petition and a statement of reasons that the petitioner believes will justify a waiver.
5. A history of any prior contacts between the petitioner and the division relating to the activity affected by the proposed waiver including any notices of violation, contested case hearings, or investigative reports relating to the activity within the last five years.
6. Any information known to the requester relating to the division’s treatment of similar cases.
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver.
8. The name, address, and telephone number of any entity or person who would be adversely affected by the granting of a petition.
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.
10. Signed releases of information authorizing persons with knowledge of the waiver request to furnish the division with information relevant to the waiver.

**434—7.9(17A) Additional information.** Prior to issuing an order granting or denying a waiver, the division may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the division may, on its own motion, or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and a representative from the division to discuss the petition and surrounding circumstances.

**434—7.10(17A) Notice.** The division shall acknowledge the petition upon receipt. The division shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the division may give notice to other persons. To accomplish this notice provision, the division may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the division attesting to the fact that notice has been provided.

**434—7.11(17A) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for waiver of a rule or set of rules filed within a contested case and shall otherwise apply to division proceedings for a waiver only when the division so provides by rule or order, or is required to do so by statute or other binding law.

## STATUS OF AFRICAN-AMERICANS, DIVISION ON THE[434](cont'd)

**434—7.12(17A) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative time period of a waiver if one is issued.

**434—7.13(17A) Conditions.** The division may condition the granting of the waiver on such conditions that the division deems to be reasonable and appropriate in order to achieve the objectives of the particular rule in question through alternative means.

**434—7.14(17A) Time for ruling.** The division shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, then the division may grant or deny the petition at the time the final decision in that contested case is issued.

**434—7.15(17A) When deemed denied.** Failure of the division to grant or deny a petition within the required time period shall be deemed a denial of that petition by the division. However, the division shall remain responsible for issuing an order denying a waiver as required by rule 7.12(17A).

**434—7.16(17A) Service of orders.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

**434—7.17(17A) Record keeping.** Subject to the provisions of Iowa Code section 17A.3(1)"e," the division shall maintain a record of all orders granting and denying waivers under this chapter. All final rulings in response to requests for waivers shall be indexed and copies distributed to members of the administrative rules review committee upon request. All final rulings shall also be available for inspection by the public at the division office during regular business hours.

**434—7.18(17A) Cancellation of a waiver.** A waiver issued by the division pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the division issues an order finding any of the following:

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

**434—7.19(17A) Violations.** A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**434—7.20(17A) Defense.** After the division issues an order granting a waiver, the order shall constitute a defense, within the terms and the specific facts indicated therein, for the per-

son to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

**434—7.21(17A) Appeals.** Appeals within the division from a decision granting or denying a waiver shall be in accordance with Iowa Code chapter 17A and division rules. These appeals shall be taken within 30 days of the issuance of the ruling granting or denying the waiver request, unless a different time is provided by rule or statute.

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

## ARC 1207B

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 adopt Chapter 178, "Project Cost Reporting Requirements for Cities and Counties," Iowa Administrative Code.

These new rules implement 2001 Iowa Acts, House File 324, sections 4, 5, 7, 8, 9, and 12, which require cities and counties to report the following information to the Department each year:

- The cost of day labor and contracts for construction, reconstruction and improvement projects on the farm-to-market, secondary road and municipal street systems.
- The cost of purchasing, leasing and renting construction and maintenance equipment.
- The use of this equipment for construction, reconstruction and improvement projects on the farm-to-market, secondary road and municipal street systems.

This legislation requires the Department to adopt rules using the input of an advisory committee composed of representatives of public sector agencies, private sector contractor organizations, and certified public employee collective bargaining organizations. The legislation directs the Department to define the terms "construction," "reconstruction," "improvement" and "repair or maintenance" and to include definitions concerning the types of projects. The legislation will become effective July 1, 2002.

The Department worked with an advisory committee composed of representatives of cities, counties, contractors and organized labor to develop rules. The rules contain the required definitions and categorize projects by type. The rules provide that counties are to report the required information as a part of the annual report they submit to the Department under Iowa Code section 309.22. Cities are to report the required information as a part of the annual report they submit to the Department under Iowa Code section 312.14.

Under the rules, reporting of projects accomplished by day labor or contract will be required for any construction, reconstruction or improvement project that has a total cost of 90 percent or more of the applicable bid threshold. Other reporting requirements set out in the Iowa Code still apply.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory

## TRANSPORTATION DEPARTMENT[761](cont'd)

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 rules 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 rule, 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](mailto:julie.fitzgerald@dot.state.ia.us).
5. Be received by the Director's Staff Division no later than January 15, 2002.

A meeting to hear requested oral presentations is scheduled for Thursday, January 17, 2002, at 1 p.m. in the Engineering Conference Room of the Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These rules are intended to implement Iowa Code sections 309.22, 309.93, 312.14, and 314.1 and 2001 Iowa Acts, House File 324, sections 4, 5, 7, 8, 9, and 12.

The proposed rules may cause political subdivisions to incur additional combined annual expenditures in excess of \$100,000. Accordingly, the Department has prepared a fiscal impact statement.

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FISCAL IMPACT STATEMENT

Pursuant to Iowa Code section 25B.6, following is a fiscal impact statement for the rules proposed in this Notice of Intended Action. The proposed rules implement 2001 Iowa Acts, House File 324, sections 4, 5, 7, 8, 9, and 12. This legislation requires cities and counties to report the following information to the Department each year:

- The cost of day labor and contracts for construction, reconstruction and improvement projects on the farm-to-market, secondary road and municipal street systems.
- The cost of purchasing, leasing and renting construction and maintenance equipment.
- The use of this equipment for construction, reconstruction and improvement projects on the farm-to-market, secondary road and municipal street systems.

As required by 2001 Iowa Acts, House File 324, section 8, an advisory committee composed of representatives of cities, counties, contractors and organized labor helped the Department develop these proposed rules. The advisory committee also discussed the fiscal impact of both the legislation and the rules. No consensus was reached as to the total fiscal impact, although all committee members agreed the fiscal impact would be over \$100,000.

Some estimated the cost of simply filling out the report forms required by the rules would be around \$250 per year for each city and county.

Others said the cost to a city to comply with the legislation could be up to \$2,000 per year. The actual cost would depend upon the project cost accounting system the city currently has in place, if any, the number and dollar value of projects the city completes each year, and the pieces of road and street equipment the city owns or leases.

Based upon the input of the advisory committee, the Department estimates the total fiscal impact on cities and counties could be at least \$265,000 per year.

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Proposed rule-making action:

CHAPTER 178  
PROJECT COST REPORTING REQUIREMENTS  
FOR CITIES AND COUNTIES

**761—178.1(314) Purpose.** The purpose of these rules is to establish requirements for the reporting by cities and counties of project cost information to the department, in accordance with 2001 Iowa Acts, House File 324, sections 4 and 5.

**761—178.2(314) Contact information.** Questions regarding this chapter may be directed to the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**761—178.3(314) Definitions.**

“City” means a municipal corporation as defined in Iowa Code section 362.2.

“Construction” means the building or development of a road, street, bridge or culvert in a new location when:

1. The new location deviates substantially from the existing alignment, and
2. The result is an entirely new road or street for the greater part of the length of the project.

“Day labor” means road, street, bridge or culvert work performed by permanent or temporary city or county employees.

“Improvement” means a betterment to a road, street, bridge or culvert. The work increases the value of the facility and enhances the facility, its traffic operations or its safety beyond the original design. The work would not be so extensive as to be classified as construction or reconstruction, but it could involve rehabilitation, restoration or resurfacing (3R) work.

“Reconstruction” means a significant change to the existing type of road, street, bridge or culvert or its geometric or structural features. Some realignment and the use of current design criteria may be involved.

“Repair or maintenance” means the preservation of a road, street, bridge or culvert so that it is in sound or proper condition. The work may include minor replacements and additions necessary to restore the road, street, bridge or culvert to its originally built condition with essentially the same design.

**761—178.4(314) Detailed instructions furnished to cities and counties.**

**178.4(1)** Each year the department shall distribute to cities and counties a set of detailed instructions for reporting the following information:

- a. The cost of day labor and contracts for construction, reconstruction, and improvement projects on the farm-to-market, secondary road and municipal street systems.
- b. The cost of purchasing, leasing, and renting construction and maintenance equipment.
- c. The use of this equipment for construction, reconstruction, and improvement projects on the farm-to-market, secondary road and municipal street systems.

**178.4(2)** These instructions constitute the form, content and method of preparation acceptable to the department. Cities and counties shall include this information in the annual reports they submit to the department under Iowa Code sections 309.22 and 312.14.

## TRANSPORTATION DEPARTMENT[761](cont'd)

**761—178.5(314) Project reporting.** Reporting under 2001 Iowa Acts, House File 324, sections 4 and 5, of projects accomplished by day labor or contract is required for any construction, reconstruction or improvement project that has a total cost of 90 percent or more of the applicable bid threshold (see 2001 Iowa Acts, House File 324, sections 7 and 9, for an explanation of bid thresholds). Other reporting requirements set out in the Iowa Code still apply.

**178.5(1) Types of projects.** Project type shall be identified. The project types are:

a. **Bridge.** The definition of “bridge” in Iowa Code section 309.75 applies. This project type includes removal of existing structures and all new construction, reconstruction and improvement of bridges.

b. **Culvert.** The definition of “culvert” in Iowa Code section 309.75 applies. This project type includes new construction or installation of an individual box or pipe culvert with a span or diameter that is greater than 4 feet but no greater than 20 feet.

c. **Roadway construction.** This project type includes, but is not limited to, all types of excavation, overhaul, clearing and grubbing, removal of pavement, and culverts included with grading.

d. **Surfaces.** This type includes, but is not limited to:

(1) Hot mix asphalt and Portland cement concrete pavements and overlays on roads, streets and shoulders.

(2) Stabilized bases and granular surfacing on new grades.

e. **Roadside construction.** This project type includes, but is not limited to:

(1) Erosion control structures such as check dams and let-down structures.

(2) Landscape treatments such as seedbed preparation, seeding, sodding, mulching, fertilizing, and planting of shrubs and trees on newly graded roads.

(3) Construction of shoulders on paved roads and rebuilding or raising entrances due to shoulder construction.

f. **Traffic control.** This project type includes, but is not limited to, installation of major signs, traffic signals, railroad crossing signals, guardrail, highway lighting, construction signing, and pavement markings on newly paved roads and streets.

g. **Miscellaneous.** This project type includes, but is not limited to, construction, reconstruction, or installation of storm sewers, subdrains, retaining walls, noise barriers, and sidewalks.

**178.5(2) Contract work.** The cost of contract work on a project is the contract price plus additions and deductions.

**178.5(3) Day labor.** The cost of day labor on a project shall include the following expenditures:

a. **Labor.** Labor cost includes the wages of city or county employees for their time devoted to the project, plus corresponding fringe benefits such as, but not limited to, IPERS, FICA and insurance.

b. **Equipment.** Equipment cost is calculated based on the equipment used on the project and the time the equipment is used. If an item of equipment is rented or leased, its rental or lease rate may be used to calculate cost. If an item of equipment is not leased, its cost shall be calculated using the standard rate established by the department for that type of equipment. The department shall establish equipment rates each year based on the latest “Rental Rate Blue Book for Construction Equipment.”

c. **Materials.** Materials cost is the cost of materials and supplies consumed or expended on the project. The materials and supplies may be procured directly for the project or

charged to the project from stock on hand. The cost of used material is its salvage value.

d. **Overhead.** Overhead cost is the pro-rata share of indirect costs to be allocated to day labor projects. Indirect costs are the city’s or county’s road- or street-related costs that cannot be charged directly to any project. The city or county may use its records to calculate the cost of overhead, or it may use a standard overhead rate of 10 percent of the labor cost excluding fringe benefits.

These rules are intended to implement Iowa Code sections 309.22, 309.93, 312.14, and 314.1 and 2001 Iowa Acts, House File 324, sections 4, 5, 7, 8, 9, and 12.

**ARC 1197B****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 601, “Application for License,” Chapter 605, “License Issuance,” and Chapter 615, “Sanctions,” Iowa Administrative Code.

Items 1 to 4 and 6 to 9 implement 2001 Iowa Acts, House File 324, sections 41 to 48. This legislation:

- Requires a licensee to notify the Department of a mailing address change within 30 days of the change.

- Requires an applicant for a new license or a renewal of an existing license to sign a statement that acknowledges the applicant’s knowledge of this requirement.

- Removes the requirement that notices under Iowa Code chapters 321 and 321J and any other law regulating the operating of vehicles be given by certified mail and substitutes first-class mail. The option of delivery of notices by personal service remains.

- Requires the Department to adopt rules regarding the giving of notice by first-class mail, the updating of addresses in the Department’s records, and the development of affidavits verifying the mailing of notices.

- Allows a person to appeal the extension of a suspension or revocation based on a conviction under Iowa Code section 321.218 or 321J.21, solely on the ground of whether the Department failed to serve notice of the underlying suspension or revocation to the address on record.

- Requires the Department to rescind the extended suspension or revocation and notify the court if the Department determines that it failed to serve such notice.

Item 5 rescinds the rule that implements renewal by mail. 2001 Iowa Acts, Senate File 528, section 8, repealed the option to renew a license by mail.

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:

## TRANSPORTATION DEPARTMENT[761](cont'd)

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 rule, 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](mailto:julie.fitzgerald@dot.state.ia.us).

5. Be received by the Director's Staff Division no later than January 15, 2002.

A meeting to hear requested oral presentations is scheduled for Thursday, January 17, 2002, 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.

These amendments are intended to implement Iowa Code chapter 321, 2001 Iowa Acts, House File 324, sections 41 to 48, and 2001 Iowa Acts, Senate File 528, section 8.

Proposed rule-making actions:

ITEM 1. Amend subrule 601.1(1) as follows:

**601.1(1) General.** In addition to the information required under Iowa Code ~~section~~ *sections* 321.182 and 321.196, the information in this rule is required from an applicant for a driver's license. Additional requirements for a commercial driver's license are found in 761—Chapter 607.

ITEM 2. Renumber subrule **601.1(6)** as **601.1(7)** and adopt **new** subrule 601.1(6) as follows:

**601.1(6) Address.** The applicant shall provide the applicant's residential address and mailing address, if different from the residential address.

ITEM 3. Amend renumbered subrule 601.1(7) and rule 761—601.1(321), implementation clause, as follows:

**601.1(7) Signature.**

a. The *applicant's* signature shall be without qualification and shall contain only the applicant's usual signature without any other titles, characters or symbols.

b. The applicant's signature certifies that the statements on the application are true and the fee collected was correct.

c. *The applicant's signature acknowledges that the applicant is aware of the requirement to notify the department of a change in mailing address within 30 days of the change.*

d. A ~~driver~~ driver's license clerk or examiner will initial the application as witness.

This rule is intended to implement Iowa Code ~~section~~ *sections* 321.182 and 321.196.

ITEM 4. Adopt **new** rule 761—605.12(321) as follows:

**761—605.12(321) Address changes.**

**605.12(1)** A licensee shall notify the department of a change in the licensee's mailing address within 30 days of the change. Notice shall be given by:

a. Submitting the address change in writing to the office of driver services, or

b. Appearing in person to change the mailing address at any driver's license examination station.

**605.12(2)** Parents or legal guardians may provide written notice of a mailing address change on behalf of their minor children.

**605.12(3)** The department may use U.S. Postal Service address information to update its address records.

This rule is intended to implement Iowa Code sections 321.182 and 321.184.

ITEM 5. Rescind rule **761—605.26(321)**.

ITEM 6. Amend rule 615.37(321) as follows:

**761—615.37(321) Service of notice.**

**615.37(1)** The department shall send a notice of denial, cancellation, suspension, revocation, disqualification or bar by ~~certified first-class mail with a return acknowledgment required~~ to the person's *mailing* address as shown on departmental records.

**615.37(2)** ~~If service by mail is unsuccessful, or in~~ *In* lieu of service by mail, the notice may be delivered by a peace officer, a departmental employee, or any person over 18 years of age.

**615.37(3) a.** The person serving the notice shall ~~certify the prepare a certificate of personal service certifying~~ delivery, specifying the name of the receiver, the address and the date, or ~~shall certify certifying~~ nondelivery.

**615.37(4) b.** The department shall pay fees for personal service of notice by a sheriff as specified in Iowa Code section 331.655. The department may also contract for personal service of notice when the department determines that it is in the best interests of the state.

~~615.37(5) 615.37(3)~~ The denial, cancellation, suspension, revocation, disqualification or bar shall become effective on the date specified in the notice.

**615.37(4)** *The department may prepare an affidavit of mailing verifying the fact that a notice was mailed by first-class mail. To verify the mailing of a notice, the department may use its records in conjunction with U.S. Postal Service records available to the department.*

**615.37(5)** *The department shall prepare an affidavit of mailing if the department determines, under Iowa Code section 321.211A, that it failed to serve a notice of suspension or revocation. The department shall send the affidavit to the court that rendered the conviction.*

This rule is intended to implement Iowa Code sections 321.16, 321.211, 321.211A, 321.556, 321J.9, 321J.12, and 331.655.

ITEM 7. Amend subrule 615.38(1) as follows:

**615.38(1) Applicability.** This rule applies to:

a. License denials, cancellations and suspensions under Iowa Code sections 321.177 to 321.215 and 321A.4 to 321A.11 except denials under Iowa Code subsection 321.177(10) and suspensions under Iowa Code sections 321.210B, 321.210D, 321.213A and 321.213B ~~and 1998 Iowa Acts, chapter 1088, section 1.~~

b. *License suspensions and revocations under Iowa Code sections 321.218 and 321J.21.*

c. ~~License~~ License revocations under Iowa Code sections 321.193 and 321.205.

d. *Disqualifications from operating a commercial motor vehicle under Iowa Code section 321.208.*

e. License bars under Iowa Code section 321.556.

ITEM 8. Amend subrule **615.38(5)**, paragraph "b," as follows:

b. Of the sanctions listed in subrule 615.38(1), the department shall not stay the following, and the person's driving privileges do not continue:

(1) A suspension for incapability.

(2) A denial.

(3) A disqualification from operating a commercial motor vehicle.

TRANSPORTATION DEPARTMENT[761](cont'd)

(4) A suspension under ~~1998 Iowa Acts, chapter 1112, section 5 Iowa Code section 321.180B.~~

(5) A suspension or revocation under Iowa Code section 321.218 or 321J.21.

ITEM 9. Amend rule ~~761—615.38(17A,321)~~, implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 17A and sections 321.177 to 321.215, 321.218, 321.556, and 321A.4 to 321A.11, and 321J.21.

**NOTICE—PUBLIC FUNDS INTEREST RATES**

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Holmes Foster, and Auditor of State Richard D. Johnson have established today the following rates of interest for public obligations and special assessments. The usury rate for December is 6.50%.

**INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS**

- 74A.2 Unpaid Warrants . . . . . Maximum 6.0%
- 74A.4 Special Assessments . . . . . Maximum 9.0%

RECOMMENDED for 74A.3 and 74A.7: A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 11, 2001, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

**TIME DEPOSITS**

7-31 days . . . . .	Minimum 1.50%
32-89 days . . . . .	Minimum 1.50%
90-179 days . . . . .	Minimum 1.60%
180-364 days . . . . .	Minimum 1.60%
One year to 397 days . . . . .	Minimum 1.80%
More than 397 days . . . . .	Minimum 2.60%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

**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:

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%
June 1, 2001 — June 30, 2001	7.25%
July 1, 2001 — July 31, 2001	7.50%
August 1, 2001 — August 31, 2001	7.25%
September 1, 2001 — September 30, 2001	7.25%
October 1, 2001 — October 31, 2001	7.00%
November 1, 2001 — November 30, 2001	6.75%
December 1, 2001 — December 31, 2001	6.50%
January 1, 2002 — January 31, 2002	6.75%



## ARC 1212B

AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 159.5(11) and 203C.5, the Department of Agriculture and Land Stewardship hereby amends Chapter 90, "State Licensed Warehouses and Warehouse Operators," Iowa Administrative Code.

This amendment eliminates the requirement that warehouse operators file with the Grain Warehouse Bureau the Department's copy (pink copy) of the warehouse receipt.

Due to layoffs within the Department, the Bureau does not have time or staff to enter information from warehouse receipts and file the thousands of warehouse receipts that it receives from licensed warehouse operators.

The Department of Agriculture and Land Stewardship finds that notice and public participation are unnecessary because there is not adequate time for the Bureau to handle the large volume of warehouse receipts that it would receive if the regular rule-making process were implemented. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective upon filing with the Administrative Rules Coordinator. This amendment confers a benefit to state licensed warehouse operators because they will not be required to file with the Bureau the Department's copy of the warehouse receipt.

No waiver provision is included in this amendment because an existing rule allows for waivers in appropriate cases. That waiver rule applies to the amendment adopted in this filing.

This amendment is also published herein under Notice of Intended Action as **ARC 1211B** to allow for public comment.

This amendment is intended to implement Iowa Code sections 203C.16, 203C.17, 203C.18, 203C.34 and 203C.35.

This amendment became effective December 7, 2001.

The following amendment is adopted.

Amend rule **21—90.12(203C)**, first unnumbered paragraph, as follows:

The original (white copy) warehouse receipt shall be given to the depositor upon demand. The depositor's copy (green) shall be given to the depositor upon issuance of the warehouse receipt. The warehouse operator's copy (yellow) shall be maintained by the warehouse operator in numerical order. ~~The department's copy (pink) shall be filed with the bureau within seven days of issuance of the receipt.~~

[Filed Emergency 12/7/01, effective 12/7/01]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

## ARC 1195B

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF[261]

## Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 25, "Housing Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1005B** on October 17, 2001. The IDEB Board adopted the amendments on November 28, 2001.

The amendments increase the maximum per-unit subsidy for new construction rental units to \$50,000 per unit and increase the maximum project amount to \$800,000 per project. Additionally, technical and language changes were made to clarify application and administrative procedures.

The following comments were received at the public hearing held November 6, 2001: comments supporting the increase in per-unit and per-project dollar amounts; a comment suggesting the addition of a definition for "new construction rental units"; and a comment objecting to defining the type of local financial contribution required of local participating jurisdictions. Based on these comments, the following changes from the Notice were made: A definition of "new construction rental units" was added; the amendments to subrule 25.6(7) defining acceptable sources of contribution to projects by local participating jurisdictions were not adopted. Also, based on comment, a new paragraph "e" was added to subrule 25.9(2) to clarify the status of release of funds in the contract between the Department and the recipient.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments, 35 days after publication, should be waived and these amendments be made effective upon filing on November 29, 2001. These amendments confer a benefit on the public because the effective date of the amendments allows for an adequate application period to access Housing Fund resources.

The Department is taking the following steps to notify potentially affected parties of the effective date of these amendments: publishing the adopted amendments in the Iowa Administrative Bulletin, providing free copies on request, posting the information on the Department's Web site, and having copies available wherever requests for information about the program are likely to be made.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

These amendments became effective on November 29, 2001.

The following amendments are adopted.

ITEM 1. Amend rule **261—25.2(15)** as follows:  
Amend the definition of "AHTC" as follows:  
"AHTC LIHTC" means ~~affordable~~ *low-income* housing tax credits and federal tax incentives created through the Tax Reform Act of 1986 and allocated through the Iowa finance authority for affordable rental housing development.

Adopt the following new definition in alphabetical order:  
"New construction rental units" means the on-site construction or erection of a building, or buildings, for the purpose of providing rental housing units. New construction rental units include conventional, on-site, stick-built construction and on-site erection or fabrication of manufac-



## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ture housing units or components of units. New construction rental units also include the addition of any rental units outside the existing walls (the building envelope) of an existing building, or buildings, that are part of a rental rehabilitation, renovation or conversion project.

ITEM 2. Amend subparagraph 25.4(1)“a”(3) as follows:

(3) For home ownership assistance, the initial purchase price for newly constructed units and the after rehabilitation appraised value for rehabilitated units shall not exceed 95 percent of the median purchase price *as established by HUD* for the same type of single-family housing in the area. Assisted units shall remain affordable through resale or recapture provisions for a specified period: 5 years for projects receiving up to \$15,000 in assistance per unit, and 10 years for projects receiving \$15,000 to \$24,999 in assistance.

ITEM 3. Amend paragraph 25.4(1)“c” as follows:

c. All *single-family* rehabilitation must be done in compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999), and all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards, 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to *one of the* standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

ITEM 4. Amend rule 261—25.5(15), introductory paragraph, as follows:

**261—25.5(15) Application procedure.** All potential housing fund applicants are encouraged, but not required, to complete and submit a HART form describing the proposed housing activity *prior to the submittal of a formal application*. If the proposal is determined to be appropriate for housing fund assistance, IDEED shall inform the applicant of the appropriate application procedure by mail. The HART process, if undertaken, should be completed *prior to or* as early as possible in the application process.

ITEM 5. Amend paragraph 25.5(5)“b” as follows:

b. ~~IDEED staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet at least twice to compare and discuss each common project. The first meeting will be convened after IDEED and IFA have completed the threshold review. The second meeting shall be convened after IDEED and IFA have completed the next phase of each agency's review process. No additional points will be awarded to an applicant seeking both types of funding. Final decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan. Staff from each agency will make recommendations for funding to their respective decision makers after the second meeting. A decision by one agency does not bind the other agency to fund a project.~~

ITEM 6. Amend subrule 25.6(5) as follows:

**25.6(5)** The application shall show that a need for housing fund assistance exists after all other financial resources have been identified *and secured* for the proposed activity.

ITEM 7. Amend rule 261—25.6(15) by adopting **new** subrule 25.6(8) as follows:

**25.6(8)** An application for rental rehabilitation must show 50 percent of the total cost of the activity from other sources. IDEED will fund no more than 50 percent of the total activity cost.

ITEM 8. Amend rule 261—25.8(15) as follows:

**261—25.8(15) Allocation of funds.**

**25.8(1) and 25.8(2)** No change.

**25.8(3)** Up to a maximum of 60 percent of the state's annual HOME allocation may be reserved for rental housing activities jointly funded with HOME and low-income housing tax credits. ~~In the event IDEED has not satisfied the HUD required 15 percent ratio of HOME funding for CHDO projects at the time low-income housing tax credit projects are considered for joint funding, IDEED may elect to first fund those projects meeting the 15 percent CHDO projects even though these projects may not be approved by IFA for low-income housing tax credit reservations.~~

**25.8(4)** IDEED reserves the right to allocate up to 5 percent of CDBG funds allocated to the housing fund for the emergency repair of homeless shelters. Recipients funded for this purpose shall not be required to follow the application procedure set forth in rule 261—25.5(15).

**25.8(5)** IDEED reserves the right to allocate up to 5 percent of the HOME funds allocated to the housing fund for a contingency fund dedicated to addressing threats to public health and safety and exceptional opportunities that would otherwise be foregone without immediate assistance.

**25.8(6) 25.8(4)** IDEED will determine the appropriate source of funding, either CDBG or HOME, for each housing fund award based on the availability of funds, the nature of the housing activity and the recipient type.

**25.8(7) 25.8(5)** IDEED reserves the right to limit the amount of funds that shall be awarded for any single activity type.

**25.8(8) 25.8(6)** Awards shall be limited to no more than \$700,000, *except for new construction of rental units which is \$800,000.*

**25.8(9) 25.8(7)** The maximum per unit housing fund subsidy for all project types *except new construction rental units* is \$24,999. *The maximum per unit housing fund subsidy for new construction rental units is \$50,000 per unit.* Additional funds may be used to pay the direct administration, carrying costs and the cost of lead hazard reduction.

**25.8(10) 25.8(8)** Recipients shall justify administrative costs in the housing fund application. IDEED reserves the right to negotiate the amount of funds provided for general and direct administration, but in no case shall the amount for general administration exceed 10 percent of a total housing fund award.

**25.8(11) 25.8(9)** IDEED reserves the right to negotiate the amount and terms of a housing fund award.

**25.8(12) 25.8(10)** IDEED reserves the right to make award decisions such that the state maintains the required level of local match to HOME funds.

**25.8(13)** ~~IDEED reserves the right to allocate a portion of funds to comprehensive areawide housing programs. Potential recipients shall be identified through a request for qualifications of entities interested in and capable of operating an areawide program. Areawide program proposals shall be evaluated on and awards negotiated on the targeted number of beneficiaries to be assisted across income levels, household types and unmet housing needs, rather than on specific activities.~~

**25.8(14) 25.8(11)** A preaudit survey will be required of all for-profit and nonprofit direct recipients *for grants that exceed \$150,000.*

ITEM 9. Rescind and reserve subrule **25.9(1).**

ITEM 10. Amend subrule 25.9(2) as follows:

**25.9(2)** A contract shall be executed between the recipient and IDEED. These rules, the housing fund application, the

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

housing *fund* management guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. *Awards Contracts* may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. *Awards Release of funds* shall be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

e. *Release of funds shall be conditioned upon IDED receipt and approval of documentation of environmental clearance.*

ITEM 11. Rescind rule **261—25.10(15)**.

[Filed Emergency After Notice 11/29/01, effective 11/29/01]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

## ARC 1193B

ECONOMIC DEVELOPMENT,  
IOWA DEPARTMENT OF [261]

## Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 41, "Community Development Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1006B** on October 17, 2001. The IDED Board adopted these amendments on November 28, 2001.

The amendments clarify eligible applicants and allowable eligible activities under Chapter 41. The Community Development Fund targets state resources to high priority issues in community and economic development including telecommunications, diversity, growth management, housing, business development and multicommunity service delivery. The fund will provide grant dollars for replicable projects and technical assistance.

A public hearing was held on November 6, 2001. No comments concerning the proposed amendments were received from the public. The final amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement 2001 Iowa Acts, House File 718.

These amendments will become effective on January 30, 2002.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 41** by amending the parenthetical implementation as follows:  
(78GA,eh1230 79GA,HF718)

ITEM 2. Amend rule 261—41.1(79GA,HF718) as follows:

**261—41.1(79GA,HF718) Purpose.** The purpose of this program is to assist communities in addressing community and economic development challenges and opportunities. Technical and financial assistance will be provided to communities to access ~~planning, training, education,~~ consultation and technical assistance to further local collaborative initiatives or to select and prioritize strategies for the improvement of operations and structures to meet business and residential demands.

ITEM 3. Amend subrule 41.2(1) as follows:

**41.2(1) Eligible applicants include ~~cities, counties, and councils of government any Iowa county, city, council of government, or resource conservation and development organization~~ which may apply on behalf of the following entities: an economic development groups; multicommunity or county projects; or coalitions of public/private entities including but not limited to local governments, educational institutions, not for profit corporations, hospitals, state agencies, or development organizations. group or government entity. Applicants must be able to demonstrate a minimum match ~~which that~~ equals at least 25 percent of the grant amount requested in the form of cash, and an additional in-kind services match of 10 percent.**

ITEM 4. Amend subrule 41.2(2) as follows:

**41.2(2) Eligible projects.** Projects eligible for funding include the following:

a. Telecommunications: ~~needs assessments,~~ education and training ~~to build market demand on enhanced telecommunications services,~~ strategy development for access and use of advanced telecommunications;

b. Growth management: strategies to promote orderly development; ~~strategies to reduce conflict arising from growth and changing land use patterns and rational land use;~~

c. Housing: area, regional or multicommunity ~~needs assessments;~~ a strategy to address specific housing needs, particularly upper-story commercial areas and in-fill lot development;

d. Business development: strategies to enhance target industry clusters (*information solutions, advanced manufacturing, and life sciences*); entrepreneurship; international trade; e-commerce, education and training through local development groups and chambers of commerce; and capital development;

e. Community services: development of multicommunity or regional delivery of government services and community development services that directly enhance business development; *innovative approaches to workforce shortages, skill development and employee retention; diversity of population capitalizing on immigration to sustain and revitalize communities;*

f. ~~Pilot projects: projects that can be replicated in the areas of diversity of population that include immigration to sustain and revitalize local communities and economies; leadership and volunteerism for community and economic development; regional delivery of community services; technology transfer to local business; and improved local business development, strategies and techniques; and~~

g. ~~Commercial development consultative services.~~

f. *Education and training: development of leadership strategies and regional workshops related to the targeted 2010 issues; and*

g. *Commercial development: one-to-one business assistance, market analysis training, upper-story reuse assistance, fundraising strategies, and building design assistance.*

ITEM 5. Amend rule 261—41.4(79GA,HF718) as follows:

**261—41.4(79GA,HF718) Application procedures.** Pre-applications shall be submitted to the ~~Community Development Fund Project Manager,~~ Community Development Fund, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. The ~~community development project manager~~ *IDED consultant team* will review preapplications, and written or oral comments will be returned to the applicant with appropriate application forms and instructions available at this address.

ITEM 6. Amend rule 261—41.6(79GA,HF718) as follows:

**261—41.6(79GA,HF718) Review process.** A committee within the department will review each eligible application. ~~Applications that score fewer than 450 points under subrule 41.6(1) will not be recommended for funding.~~ Applicants may be interviewed further to explore the potential for providing technical assistance, gain additional information concerning the proposal, and negotiate the project's work plan and budget.

**41.6(1) Ranking and scoring Application review.** The committee will ~~rank review~~ the applications based on the following ~~criteria:~~ *deliverables:*

a. *Goals: are they obtainable in one year?*

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

- b. *Economic impact: is it measurable?*  
 c. *Regional partners: is there a larger impact for the region?*  
 d. *Industry clusters: does the project advance industry retention or an expansion of the targeted groups?*  
 e. *Models for success: can the project be replicated in other parts of the state to address 2010 issues?*

**41.6(2)** *Project description. Each project description must include:*

a. Demonstrated need for the project. (Economic or community enhancement impact to the area; how the project will improve the development potential of the project area, improve access to services, or create an environment for community improvement.) ~~150 points possible.~~

b. Capacity of the applicant to sustain, implement, or reach stated objectives once grant period is concluded. ~~75 points possible.~~

c. Demonstrated networking, cooperation and partnerships with other entities, organizations, and local governments necessary to meet stated goals and objectives, including past successful cooperative efforts that have been sustained over time. Multicommunity groups are strongly encouraged. ~~100 points possible.~~

d. Local financial and volunteer contribution to the project that exceeds minimum match requirements. (Cash, office materials, supplies, volunteer support, office space, equipment, administrative assistance.) ~~100 points possible.~~

e. Creativity and innovation of the proposed project to address issues presented. (Project demonstrates a new and creative approach to address a common issue/concern.) ~~150 points possible.~~

f. Evidence of participation in local planning that supports the request for funds. (Community builder plan, housing needs assessment, comprehensive land use planning, or a similar planning activity that has led the applicant to the proposed activity which the application addresses.) ~~75 points possible.~~

g. Demonstrated need for the funds requested. ~~100 points possible.~~

h. Evidence of local planning. ~~75 points possible.~~

~~41.6(2)~~ **41.6(3)** *Ineligible expenses. Expenses ineligible for reimbursement include, but are not limited to:*

- a. Purchase of land, buildings or improvements thereon.  
 b. Expenses for development of sites and facilities.  
 c. Cost of nonexpendable equipment (i.e., computers and fax and copy machines).  
 d. Cost of studies or plans that are routinely developed as part of a city or county function or operation, such as development of a comprehensive plan, community builder plans, master plans or engineering studies for water, sewer, roads, or parks.

[Filed 11/29/01, effective 1/30/02]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

## ARC 1205B

INSPECTIONS AND APPEALS  
DEPARTMENT[481]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 10A.104(5) and 10A.801(7), the Department of Inspections and Appeals hereby amends Chapter 10, "Contested Case Hearings," Iowa Administrative Code.

These amendments make clarifications to the Code of Administrative Judicial Conduct as it relates to agency heads and boards that act as presiding officers in contested case hearings. Clarifications are being adopted at the suggestion of the Attorney General's office.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 31, 2001, as **ARC 1060B**. No written comments were received during the comment period. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 10A and 17A.

These amendments will become effective January 30, 2002.

The following amendments are adopted.

ITEM 1. Amend rule 481—10.29(10A), introductory paragraph, as follows:

**481—10.29(10A) Code of administrative judicial conduct.** The code of administrative judicial conduct is designed to govern the conduct, in relation to their adjudicative functions in contested cases, of all persons who act as presiding officers under the authority of Iowa Code section 17A.11(1) ~~as amended by 1998 Iowa Acts, chapter 1202, section 15.~~ The canons are rules of reason. The canons shall be applied consistent with constitutional requirements, statutes, administrative rules, and decisional law and in the context of all relevant circumstances. The canons must be harmonized with the dictates of the administrative process as established by the legislature. *While Canons 1, 2, and 3 are generally applicable to both administrative law judges and agency heads or members of multimember agency heads when these persons act as presiding officers, these canons shall be applied to agency heads and members of multimember agency heads only as expressly mandated by statute and as reasonably practicable when taking into account the fact that agency heads and members of multimember agency heads, unlike administrative law judges, have multiple duties imposed upon them by law. The provisions of Canon 4 concerning the regulation of extrajudicial activities are not applicable to agency heads or members of multimember agency heads.* This code is to be construed so as to promote the essential independence of presiding officers in making judicial decisions.

ITEM 2. Amend subparagraph **10.29(3)"a"(5)** as follows:

(5) A presiding officer shall accord to all persons who are legally interested in a proceeding, or their representatives, full right to be heard according to law, and ~~except as authorized by law,~~ neither initiate nor consider ex parte communications ~~as to substantive matters concerning a pending or impending proceeding prohibited by Iowa Code section 17A.17.~~

~~This subparagraph (5) is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.~~

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

ITEM 3. Amend subparagraph 10.29(3)"a"(8) as follows:

(8) A presiding officer shall not disclose or use, for any purpose unrelated to adjudicative duties, nonpublic information acquired in an adjudicative capacity except as lawfully permissible in the performance of official duties by an agency head or member of a multimember agency head.

~~This subparagraph (8) is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.~~

ITEM 4. Amend subrule 10.29(4) as follows:

~~10.29(4) Canon 4. A presiding officer~~ *An administrative law judge shall regulate extrajudicial activities to minimize the risk of conflict with judicial duties.*

~~In general, a presiding officer~~ *an administrative law judge shall conduct all of the presiding officer's administrative law judge's extrajudicial activities so that they do the administrative law judge does not:*

- 1. Cast reasonable doubt on the ~~presiding officer's administrative law judge's~~ capacity to act impartially as a judge;
- 2. Create the appearance of impropriety or demean the adjudicative office; or
- 3. Interfere with the proper performance of adjudicative duties.

~~This subrule, 10.29(4), is not applicable to agency heads or members of multimember agency heads when they act as presiding officers.~~

[Filed 12/6/01, effective 1/30/02]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

**ARC 1210B**

**INSURANCE DIVISION[191]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 508E.4, the Insurance Division hereby adopts new Chapter 48, "Viatical and Life Settlements," Iowa Administrative Code.

This new chapter regulates the administration of viatical and life settlements by providing rules under which viatical and life settlements may be made, by requiring the licensure of viatical settlement brokers and viatical settlement providers, and by requiring disclosures and other provisions by which viators may be protected.

Notice of Intended Action was published in the October 17, 2001, Iowa Administrative Bulletin as **ARC 1044B**. A public hearing was held at the Insurance Division's offices on November 15, 2001.

Public comments were generally supportive of these new rules. The Division received only two comments requesting changes to the rules. After review, paragraph 48.5(1)"i" was modified and now requires that the National Association of Insurance Commissioners' (NAIC) brochure on viatical or life settlements be given to both a viator and an insured. The paragraph now reads as follows: "i. Disclosure to a viator and insured shall include distribution of the NAIC's most current form of brochure describing the process of viatical or life settlements, or such other form approved by the commissioner." The other comment related to subrule 48.3(3). The

commenter thought this subrule was stricter than the NAIC model. The Division decided not to modify this subrule.

These rules were adopted on December 6, 2001.

These rules will become effective on February 1, 2002.

These rules are intended to implement Iowa Code chapter 508E.

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 48] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 1044B**, IAB 10/17/01.

[Filed 12/7/01, effective 2/1/02]

[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1222B**

**NURSING BOARD[655]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

This amendment provides for the submission of a request for inactive status in writing or over the Internet 60 days prior to license expiration.

This amendment was published in the Iowa Administrative Bulletin on October 17, 2001, as **ARC 1032B**. This amendment is identical to that published under Notice.

This amendment will become effective January 30, 2002.

This amendment is intended to implement Iowa Code chapters 17A, 147 and 152.

The following amendment is adopted.

Rescind subrule 3.7(6), paragraph "a," subparagraph (3), and adopt in lieu thereof the following new subparagraph (3):

- (3) Submit a request for inactive status, either in writing or over the Internet, 60 days prior to license expiration. Inactive status becomes effective when the current license expires.

[Filed 12/7/01, effective 1/30/02]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

**ARC 1221B**

**NURSING BOARD[655]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 4, "Discipline," Iowa Administrative Code.

These amendments explain authority to review or investigate complaint information, correct a code reference, expand provisions for informal settlements, define nurse licensure

## NURSING BOARD[655](cont'd)

compact terms, note additional grounds for discipline, clarify the licensure reinstatement application process, and identify requirements for rehearing.

These amendments were published in the Iowa Administrative Bulletin on October 17, 2001, as **ARC 1033B**. These amendments are identical to those published under Notice.

These amendments will become effective January 30, 2002.

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

**EDITOR'S NOTE:** Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 4] is being omitted. These amendments are identical to those published under Notice as **ARC 1033B**, IAB 10/17/01.

[Filed 12/7/01, effective 1/30/02]  
[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1220B****NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby adopts new Chapter 17, "Child Support Noncompliance," Iowa Administrative Code.

These rules implement Iowa Code chapter 252J, which addresses child support noncompliance.

These rules were published in the Iowa Administrative Bulletin on October 17, 2001, as **ARC 1038B**. These rules are identical to those published under Notice.

These rules will become effective January 30, 2002.

These rules are intended to implement Iowa Code chapter 252J.

**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 17] is being omitted. These rules are identical to those published under Notice as **ARC 1038B**, IAB 10/17/01.

[Filed 12/7/01, effective 1/30/02]  
[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1219B****NURSING BOARD[655]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby adopts new Chapter 18, "Student Loan Default or Noncompliance," Iowa Administrative Code.

These rules implement Iowa Code chapter 261, which addresses student loan default or noncompliance.

These rules were published in the Iowa Administrative Bulletin on October 17, 2001, as **ARC 1039B**. These rules are identical to those published under Notice.

These rules will become effective January 30, 2002.

These rules are intended to implement Iowa Code chapter 261.

**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 18] is being omitted. These rules are identical to those published under Notice as **ARC 1039B**, IAB 10/17/01.

[Filed 12/7/01, effective 1/30/02]  
[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1206B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby rescinds Chapter 30, "Licensure of Marital and Family Therapists and Mental Health Counselors"; rennumbers Chapter 31, "Disciplinary Procedures," as Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors"; adopts new Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors"; amends Chapter 32, "Continuing Education for Marital and Family Therapists and Mental Health Counselors"; and adopts new Chapter 34, "Fees," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 3, 2001, as **ARC 0987B**. A public hearing was held on October 23, 2001, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No written or verbal comments were received.

The following changes were made to the Notice of Intended Action:

- A definition for "ACA" has been added to rule 645—31.1(154D).
- Subrule 31.2(7) has been reworded for clarification.
- The phrase "or the Certified Rehabilitation Counselor Examination of the CRCC" has been added to paragraph 31.3(1)"b."
- Subrule 31.3(2) has been reworded to clarify that once an applicant is approved to take the examination, examination information will be provided to the applicant.
- Subrules 31.4(1) through 31.4(3) have been renumbered.
- The first unnumbered paragraph of 31.4(2)"a"(3) has been moved to 31.4(2)"b"(2).

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- Subrule 31.5(3) has been reworded, and subrules 31.6(1) to 31.6(3) have been renumbered for clarification.
  - The words “mental health counseling” were added for clarification to subrule 31.6(1). The phrase now reads “mental health counseling program.”
  - An unnumbered paragraph has been added to paragraph 31.6(2)“1” for applicants who have taught a graduate-level course. This paragraph is in the current rules, but was omitted from the Notice.
  - The phrase “licensed mental health counselor in Iowa” has been changed to “supervisor” in 31.7(2)“b”(2).
  - The requirements for foreign-trained marital and family therapists, formerly found in subrule 31.7(5), are now found in 31.6(4).
  - In subrules 31.11(5) and 31.12(5), the phrase “any state” was changed to “all states” for clarity.
  - The table that illustrates the requirements for reinstatement of a lapsed license has been amended to show that successful completion of examination is required if the license has been lapsed more than two bienniums.
- These amendments were adopted by the Board of Behavioral Science Examiners on December 3, 2001.
- These amendments will become effective January 30, 2002.
- These amendments are intended to implement Iowa Code section 147.76 and chapters 17A, 154D and 272C.
- The following amendments are adopted.

ITEM 1. Rescind and reserve **645—Chapter 30**.

ITEM 2. Renumber **645—Chapter 31** as **645—Chapter 33** and amend the title as follows:

CHAPTER ~~31~~ 33  
~~DISCIPLINARY PROCEDURES~~ *DISCIPLINE FOR*  
*MARITAL AND FAMILY THERAPISTS AND*  
*MENTAL HEALTH COUNSELORS*

ITEM 3. Adopt **new** 645—Chapter 31 as follows:

CHAPTER 31  
 LICENSURE OF MARITAL AND FAMILY  
 THERAPISTS AND MENTAL HEALTH COUNSELORS

**645—31.1(154D) Definitions.** For purposes of these rules, the following definitions shall apply:

“ACA” means the American Counseling Association.

“AMFTRB” means the Association of Marital and Family Therapy Regulatory Boards.

“Board” means the board of behavioral science examiners.

“Course” means three graduate semester credit hours.

“CRCC” means the Commission on Rehabilitation Counselor Certification.

“Department” means the department of public health.

“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 marital and family therapist or mental health counselor in the state of Iowa.

“License expiration date” means September 30 of even-numbered years.

“Licensure by endorsement” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state.

“NBCC” means the National Board for Certified Counselors.

“Reciprocal license” means the issuance of an Iowa license to practice mental health counseling or marital and family therapy to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of behavioral science examiners to license persons who have the same or similar qualifications to those required in Iowa.

**645—31.2(154D) Requirements for licensure.** The following criteria shall apply to licensure:

**31.2(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 the Board of Behavioral Science Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**31.2(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.

**31.2(3)** Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Behavioral Science Examiners. The fees are nonrefundable.

**31.2(4)** No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science examiners have been received by the board.

**31.2(5)** The candidate shall have the examination score sent directly from the testing service to the board.

**31.2(6)** The completed application form shall be filed with the board of behavioral science examiners with all required supervision forms and fees at least 90 days before the date of the examination.

**31.2(7)** A licensee who was issued an initial license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

**31.2(8)** Incomplete applications that have been on file in the board office for more than two years shall be:

- a. Considered invalid and shall be destroyed; or
- b. Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

**31.2(9)** Notification of eligibility for examination shall be sent to the licensee by the board.

**645—31.3(154D) Examination requirements.** The following criteria shall apply to the written examination(s):

**31.3(1)** In order to qualify for licensing, the applicant:

a. For a marital and family therapist license shall take and pass the Association of Marital and Family Therapy Regulatory Board (AMFTRB) Examination in Marital and Family Therapy.

b. For a mental health counselor license shall take and pass the National Counselor Examination of the National Board for Certified Counselors, or the National Clinical Mental Health Counselor Examination of the NBCC, or the Certified Rehabilitation Counselor Examination of the CRCC.

**31.3(2)** Examination information will be provided when the applicant has been approved to take the examination.

**31.3(3)** The board will notify the applicant in writing of examination results.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**31.3(4)** Persons determined by the board not to have performed satisfactorily may apply for reexamination.

**31.3(5)** The passing score on the written examination shall be the passing point criterion established by the appropriate national testing authority at the time the test was administered.

**645—31.4(154D) Educational qualifications for marital and family therapists.** The applicant must present proof of meeting the following educational requirements for licensure as a marital and family therapist:

**31.4(1)** Applicants must present with the application an official transcript verifying completion of a master's degree of 45 semester hours (or 60 quarter hours) or a doctoral degree in marital and family therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) from a college or university accredited by an agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation; or

**31.4(2)** Applicants must present with the application an official transcript verifying completion of a master's degree of 45 semester hours (or 60 quarter hours) or a doctoral degree in a mental health, behavioral science, or a counseling-related field from a college or university accredited by an agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation, which is content-equivalent to a graduate degree in marital and family therapy. In order to qualify as a "content-equivalent" degree, a graduate transcript must document:

a. At least three courses in each of the three areas listed below:

(1) Theoretical foundations of marital and family therapy systems. Any course which deals primarily in areas such as family life cycle; theories of family development; marriage or the family; sociology of the family; families under stress; the contemporary family; family in a social context; the cross-cultural family; youth/adult/aging and the family; family subsystems; individual, interpersonal relationships (marital, parental, sibling).

(2) Assessment and treatment in family and marital therapy. Any course which deals primarily in areas such as family therapy methodology; family assessment; treatment and intervention methods; overview of major clinical theories of marital and family therapy, such as communications, contextual, experiential, object relations, strategic, structural, systemic, transgenerational.

(3) Human development. Any course which deals primarily in areas such as human development; personality theory; human sexuality. One course must be psychopathology.

b. At least one course in each of the two areas listed below:

(1) Ethics and professional studies. Any course which deals primarily in areas such as professional socialization and the role of the professional organization; legal responsibilities and liabilities; independent practice and interprofessional cooperation; ethics; and family law.

(2) Research. Any course which deals primarily in areas such as research design, methods, statistics; research in marital and family studies and therapy.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course will be credited toward the course requirements.

c. A practicum/internship of at least 300 clock hours is required for all applicants. The internship hours may be used to count toward the supervision requirement.

**31.4(3)** All courses must be at least three graduate semester credit hours. One semester hour shall equal 15 clock hours of course time. A course may not be used more than once to fulfill more than one content area.

**645—31.5(154D) Clinical experience requirements for marital and family therapists.**

**31.5(1)** The supervised clinical experience shall:

a. Be a minimum of two years of full-time supervised clinical work experience in marital and family therapy;

b. Be completed following the practicum and all graduate coursework, with the exception of the thesis;

c. Include successful completion of at least 200 hours of supervision concurrent with 1,000 hours of marital and family therapy conducted in face-to-face contact with couples and families;

d. Have only supervised clinical contact credited for this requirement; and

e. Include at least 100 of the 200 hours of supervision as individual supervision.

**31.5(2)** To meet the requirements of the supervised clinical experience:

a. The supervisee must:

(1) Meet with the supervisor for a minimum of one hour per week, face to face and individually;

(2) Have training that is appropriate to the functions to be performed;

(3) Offer documentation in the name of the supervising marital and family therapist;

(4) Begin the experience after all academic requirements are met for the master's degree or higher;

(5) Compute part-time employment on a prorated basis for the supervised professional experience;

(6) Have the background, training, and experience that is appropriate to the functions performed;

(7) Have supervision that is clearly distinguishable from personal psychotherapy and is contracted in order to serve professional/vocational goals;

(8) Have individual supervision that shall be face to face with no more than one supervisor to two supervisees;

(9) Have group supervision that may be completed with up to six supervisees and a supervisor; and

(10) Not participate in the following activities which are deemed unacceptable for clinical supervision:

1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.

2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.

3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.

4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.

5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

b. The supervisor shall:

(1) Be an Iowa licensed marriage and family therapist; or



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Be a supervisor or supervisor-in-training approved by the American Association for Marriage and Family Therapy Commission on Supervision; or

(3) Be an alternate supervisor who possesses qualifications equivalent to a licensed marital and family therapist, including mental health professionals licensed pursuant to Iowa Code chapter 147. Proposed alternate supervisors must submit an alternate supervision request form;

(4) Meet a minimum of one hour per week, face to face and individually with the supervisee;

(5) Provide training that is appropriate to the functions to be performed;

(6) Ensure that therapeutic work is completed under the professional supervision of a supervisor; and

(7) Not supervise any marital and family therapy or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

**31.5(3)** All supervision beginning on or after January 1, 2003, shall be provided by a person licensed as a marital and family therapist.

**31.5(4)** An applicant who has obtained American Association for Marriage and Family Therapy clinical membership and has provided a transcript sent directly from the school to the board is considered to have met the educational and clinical experience requirements of rules 31.4(154D) and 31.5(154D).

**645—31.6(154D) Educational qualifications for mental health counselors.** The applicant must present proof of meeting the following educational requirements for a mental health counselor:

**31.6(1)** Applicants must present with the application an official transcript verifying completion of a master's degree of 45 semester hours (or 60 quarter hours) or a doctoral degree in counseling with emphasis in mental health counseling from a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs from a college or university accredited by an agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation; or

**31.6(2)** Applicants must present with the application an official transcript verifying completion of a master's degree or a doctoral degree from a college or university accredited by an agency recognized by the United States Department of Education or the Council on Postsecondary Accreditation which is content-equivalent to a master's degree in counseling with emphasis in mental health counseling. The degree will be considered as "content-equivalent" if it includes 45 semester hours (or 60 quarter hours) and successful completion of graduate-level coursework in each of the following areas:

a. Counseling theories;

b. Supervised counseling practicum;

c. Human growth and development. Studies that provide an understanding of the nature and needs of individuals at all developmental levels. Studies in this area include, but are not limited to, the following:

(1) Theories of human development across the life span;

(2) Major theories of personality development;

(3) Human behavior, including an understanding of developmental crises, disability, psychopathology, and cultural factors as they affect both normal and abnormal behavior;

d. Social and cultural foundations. Studies that provide an understanding of issues and trends in a multicultural and diverse society. Studies in this area include, but are not limited to, the following:

(1) Multicultural and pluralistic trends, including characteristics and concerns of diverse groups;

(2) Attitudes and behavior based on factors such as age, race, religious preference, physical disability, sexual orientation, ethnicity and culture, gender, socioeconomic status, and intellectual ability; and

(3) Individual and group interventions with diverse populations;

e. Helping relationships. Studies that provide an understanding of counseling and consultation processes. Studies in this area include, but are not limited to, the following:

(1) Helping skills, and counseling and consultation theories, including coverage of relevant research and factors considered in applications;

(2) Counselor or consultant characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, orientations, and skills; and

(3) Client or consultee characteristics and behaviors that influence helping processes, including gender and ethnicity differences, verbal and nonverbal behaviors and personal characteristics, traits, capabilities, life circumstances, and developmental levels;

f. Groups. Studies that provide an understanding of group development, dynamics, counseling theories, and group counseling methods and skills. Studies in this area include, but are not limited to, the following:

(1) Principles of group dynamics, including group process components, developmental stage theories, and group members' roles and behaviors;

(2) Group leadership styles and approaches, including characteristics of various types of group leaders and leadership styles;

(3) Theories of group counseling, including commonalities, distinguishing characteristics, and pertinent research and literature; and

(4) Group counseling methods, including group counselor orientations and behaviors, ethical considerations, appropriate selection criteria and methods, and methods of evaluation of effectiveness;

g. Career and lifestyle development. Studies that provide an understanding of career development and the interrelationships among work, family, and other life factors. Studies in this area include, but are not limited to, the following:

(1) Career development theories and decision-making models;

(2) Career, avocational, educational and labor market sources, print media, computer-assisted career guidance, and computer-based career information;

(3) Career development program planning;

(4) Interrelationships among work, family, and other life factors such as multicultural and gender issues, as related to career development;

(5) Career and educational placement, follow-up and evaluation; and

(6) Assessment instruments relevant to career planning and decision making;

h. Diagnosis and assessment treatment procedures studies that provide an understanding of individual and group approaches to assessment and evaluation. Studies in this area include, but are not limited to, the following:

(1) Theoretical and historical bases for assessment techniques and methods of interpretation of appraisal data and information;

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(2) Types of educational and psychological appraisal as appropriate to the helping process;

(3) Validity, including evidence for establishing content, construct, and empirical validity;

(4) Reliability, including methods of establishing stability and internal and equivalence reliability;

(5) Major appraisal methods, including environmental assessment, performance assessment, individual and group test and inventory methods, behavioral observations, and computer-managed and computer-assisted methods;

(6) Psychometric statistics, including types of test scores, measures of central tendency, indices of variability, standard errors and correlations; and

(7) Gender, ethnicity, language, disability, and cultural factors related to the assessment and evaluation of individuals and groups;

i. Research and program evaluation studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research. Studies in this area include, but are not limited to, the following:

(1) Basic types of research methods, including qualitative, quantitative-descriptive, and quantitative-descriptive-experimental designs;

(2) Basic statistics, including both univariate and bivariate hypothesis testing;

(3) Uses of computers for data management and analyses; and

(4) Ethical and legal considerations in research;

j. Professional orientation studies that provide an understanding of all aspects of professional functioning, including history, roles, organizational structures, ethics, standards, and credentialing. Studies in this area include, but are not limited to, the following:

(1) History of the helping professions, including significant factors and events;

(2) Professional roles and functions, including similarities with and differences from other types of professionals;

(3) Professional organizations (i.e., ACA, its divisions, and its branches), including membership benefits, activities, services to members, and current emphases;

(4) Ethical standards of the ACA and their evolution, legal issues, and applications to various professional activities (e.g., appraisal and group work);

(5) Professional preparation standards, their evolution, and current applications; and

(6) Professional credentialing, including certification, licensure, and accreditation practices and standards, and the effects of public policy on these issues;

k. Supervised counseling internship that provides an opportunity for the trainee to perform under supervision a variety of activities that a regularly employed staff member in a setting would be expected to perform. A regularly employed staff member is defined as a person occupying the professional role to which the trainee is aspiring. The internship follows a supervised practicum experience. A three-semester-hour internship includes the following:

(1) A minimum of 120 hours of direct service with clientele appropriate to the program of study;

(2) A minimum of one hour per week of individual supervision, throughout the internship, usually performed by the on-site supervisor;

(3) A minimum of one and one-half hours per week of group supervision, throughout the internship, usually performed by a program faculty member supervisor;

l. Psychopathology studies that provide an understanding of the description, classification and diagnosis of behav-

ior disorders and dysfunction. Studies in this area include, but are not limited to, the following:

(1) Study of cognitive, behavioral, physiological and interpersonal mechanisms for adapting to change and to stressors;

(2) Role of genetic, physiological, cognitive, environmental and interpersonal factors, and their interactions, on development of the form, severity, course and persistence of the various types of disorders and dysfunction;

(3) Research methods and findings pertinent to the description, classification, diagnosis, origin, and course of disorders and dysfunction;

(4) Theoretical perspectives relevant to the origin, development, and course and outcome for the forms of behavior disorders and dysfunction; and

(5) Methods of intervention or prevention used to minimize and modify maladaptive behaviors, disruptive and distressful cognition, or compromised interpersonal functioning associated with various forms of maladaptation.

If the applicant has taught a graduate-level course as outlined above at a college or university accredited by an agency recognized by the United States Department of Education or the Council on Professional Accreditation, that course will be credited toward the course requirement.

**31.6(3)** All courses must be at least three graduate semester credit hours. One semester hour shall equal 15 clock hours of course time. A course may not be used more than once to fulfill more than one content area.

**31.6(4)** Foreign-trained marital and family therapists or mental health counselors shall:

a. Provide an equivalency evaluation of their educational credentials by 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](http://www.ierf.org) or E-mail at [info@ierf.org](mailto: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 mental health counselor program in the country in which the applicant was educated.

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

**645—31.7(154D) Clinical experience requirements for mental health counselors.**

**31.7(1)** The supervised clinical experience shall:

a. Be a minimum of two years of full-time supervised professional work experience in mental health counseling;

b. Be completed following completion of the practicum and all graduate coursework, with exception of the thesis;

c. Include successful completion of at least 200 hours of supervision concurrent with 1,000 hours of mental health counseling conducted in face-to-face contact with individuals, couples or families;

d. Have only supervised clinical contact credited for this requirement; and

e. Include at least 100 of the 200 hours of supervision as individual supervision.

**31.7(2)** To meet the requirements of the supervised clinical experience:

a. The supervisee must:

(1) Meet with the supervisor a minimum of one hour per week, face to face and individually;

(2) Have training that is appropriate to the functions to be performed;

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(3) Offer documentation in the name of the supervising mental health counselor;

(4) Begin the experience after all academic requirements are met for the master's degree or higher;

(5) Compute part-time employment on a prorated basis for the supervised professional experience;

(6) Have the background, training, and experience that are appropriate to the functions performed;

(7) Have supervision that is clearly distinguishable from personal counseling and is contracted in order to serve professional/vocational goals;

(8) Have individual supervision that shall be face to face with no more than one supervisor to two supervisees;

(9) Have group supervision that may be completed with up to six supervisees and a supervisor; and

(10) Not participate in the following activities which are deemed unacceptable for clinical supervision:

1. Peer supervision, i.e., supervision by a person of equivalent, but not superior, qualifications, status, and experience.

2. Supervision, by current or former family members, or any other person, in which the nature of the personal relationship prevents, or makes difficult, the establishment of a professional relationship.

3. Administrative supervision, e.g., clinical practice performed under administrative rather than clinical supervision of an institutional director or executive.

4. A primarily didactic process wherein techniques or procedures are taught in a group setting, classroom, workshop, or seminar.

5. Consultation, staff development, or orientation to a field or program, or role-playing of family interrelationships as a substitute for current clinical practice in an appropriate clinical situation.

b. The supervisor:

(1) May be a licensed mental health counselor in Iowa; or

(2) Shall be approved by the National Board for Certified Counselors (NBCC) as a supervisor; or

(3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor, including mental health professionals licensed pursuant to Iowa Code chapter 147. Proposed alternate supervisors must submit an alternate supervision request form;

(4) Shall meet a minimum of one hour per week, face to face and individually with the supervisee;

(5) Shall provide training that is appropriate to the functions to be performed;

(6) Shall ensure that therapeutic work is done under the professional supervision of a supervisor; and

(7) Shall not supervise any mental health counselor or permit the supervisee to engage in any therapy which the supervisor cannot perform competently.

**31.7(3)** All supervision beginning on or after January 1, 2003, shall be provided by a person licensed as a mental health counselor.

**31.7(4)** An applicant who has obtained Certified Clinical Mental Health Counselor status with the National Board for Certified Counselors (NBCC) and submits a transcript sent directly from the school to the board is considered to have met the educational and clinical experience requirements of rules 31.6(154D) and 31.7(154D).

**645—31.8(154D) Licensure by endorsement.** An applicant who has been a licensed marriage and family therapist or mental health counselor under the laws of another jurisdiction may 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 sent directly from the school to the board;

5. Supplies satisfactory evidence of the candidate's qualifications in writing on the prescribed forms by the candidate's supervisors. If verification of clinical experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision; and

6. Provides verification(s) of licenses from all other states that have been sent directly from those states to the board office.

**645—31.9(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 marital and family therapists or mental health counselors.

**645—31.10(147) License renewal.**

**31.10(1)** The biennial license renewal period for a license to practice marital and family therapy or mental health counseling shall begin on October 1 of even-numbered years and end on September 30 of the next even-numbered year. All licensees shall renew on a biennial basis.

**31.10(2)** A renewal of license application and a continuing education report form to practice marital and family therapy or mental health counseling 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 licensee 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. An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license 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 40 hours of continuing education per biennium for each subsequent license renewal.

d. Persons licensed to practice marital and family therapy or mental health counseling shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

**31.10(3)** Late renewal. If the renewal fee(s), 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 is charged.

**31.10(4)** When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

**645—31.11(272C) Exemptions for inactive practitioners.**

**31.11(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 ap-

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plicant 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.

**31.11(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—32.10(272C).

**31.11(3)** 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.

**31.11(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. Forty hours of continuing education will be required for every renewal thereafter.

**31.11(5)** Verification(s) of license(s) is required from all states in which the licensee has practiced since the Iowa license became inactive.

**31.11(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 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
Furnish evidence of completion of approved continuing education OR Furnish evidence of completion of the national examination	40 hours  Successful completion of examination	80 hours  Successful completion of examination
Total fees and continuing education hours required for reinstatement:	\$150 and 40 hours	\$150 and 80 hours

**645—31.12(272C) Lapsed licenses.**

**31.12(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 accompanied by the reinstatement fee, the renewal fees 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.

**31.12(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 marital and family therapy or mental health counseling. Practicing without a license may be cause for

disciplinary action.

**31.12(3)** In order to reinstate a lapsed license, licensees shall comply with all requirements for reinstatement as outlined in 645—32.6(272C).

**31.12(4)** After reinstatement of the lapsed license, the licensee shall renew at the next scheduled renewal cycle and complete the continuing education required for the biennium.

**31.12(5)** Verification(s) of license(s) is required from all states in which the licensee has practiced since the Iowa license lapsed.

**31.12(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 renewals	4 renewals	5 or more renewals
Submit written application for reinstatement	Required	Required	Required	Required	Required
Pay the renewal fee(s)	\$100	\$200	\$300	\$400	\$500
Pay the late fee	\$50	\$50	\$50	\$50	\$50
Pay the reinstatement fee	\$50	\$50	\$50	\$50	\$50
Furnish evidence of completion of continuing education requirements during the period since the license lapsed OR/AND Furnish evidence of successful completion of the national examination	40 hours  OR Successful completion of examination	80 hours  OR Successful completion of examination	120 hours  AND Successful completion of examination	120 hours  AND Successful completion of examination	120 hours  AND Successful completion of examination
Total fees and continuing education hours required for reinstatement:	\$200 and 40 hours	\$300 and 80 hours	\$400 and 120 hours	\$500 and 120 hours	\$600 and 120 hours

**645—31.13(17A,147,272C) License denial.**

**31.13(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

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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.

**31.13(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 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, 154D and 272C.

ITEM 4. Amend rule 645—32.6(272C) as follows:

**645—32.6(272C) Reinstatement of lapsed license.** Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows the license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse must 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 past due and current renewal fees;
3. Pays late fee;
4. Pays reinstatement fee; *and*
5. Provides evidence of satisfactory completion of ~~con-~~  
~~tinuing:~~

- *Continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 40 by the number of bienniums since the license lapsed, to a maximum of ~~five three~~ renewal periods. ~~If the reinstated license is obtained in the first year of the continuing education biennium the licensee shall obtain 40 hours of continuing education, and if the license is obtained in the second year of the continuing education biennium, the licensee shall obtain 20 hours of continuing education;~~ *or**

~~6. The board may require an oral interview prior to reinstatement.~~

- *Taking and passing the national examination within the past biennium. The licensee shall have the examination scores sent directly from the examination service to the board.*

7 6. Those persons whose licenses have lapsed for more than two bienniums shall also be required to complete the appropriate professional examination.

ITEM 5. Amend rule 645—32.10(272C) as follows:

**645—32.10(272C) Reinstatement of inactive practitioners.** Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of waiver shall, prior to engaging in the practice of marital and family therapy or mental health counseling in the state of Iowa, satisfy the following requirements for reinstatement.

**32.10(1)** Submit written application for reinstatement to the board upon forms provided by the board; ~~and~~

**32.10(2)** Submit payment of the current renewal fee;

**32.10(3)** Submit payment of reinstatement fee; *and*

**32.10(4)** Furnish in the application evidence of completion of a:

a. A total number of hours of approved continuing education computed by multiplying 40 by the number of

bienniums a certificate of exemption shall have been in effect for such applicant to a maximum of ~~five two~~ bienniums; ~~or If the reinstated license is obtained in the first year of the continuing education biennium the licensee shall obtain 40 hours of continuing education, and if the license is obtained in the second year of the continuing education biennium the licensee shall complete 20 hours of continuing education.~~

~~32.10(5) The board may require an oral interview prior to reinstatement.~~

b. *Taking and passing the national examination within the past biennium. The licensee shall have the examination scores sent directly from the examination service to the board.*

ITEM 6. Adopt new 645—Chapter 34 as follows:

#### CHAPTER 34 FEES

**645—34.1(147,154D) License fees.** All fees are nonrefundable.

**34.1(1)** Licensure fee for license to practice marital and family therapy or mental health counseling is \$100.

**34.1(2)** Biennial license renewal fee for each biennium is \$100.

**34.1(3)** Late fee for failure to renew before expiration is \$50.

**34.1(4)** Reinstatement fee for a lapsed license or an inactive license is \$50.

**34.1(5)** Duplicate license fee is \$10.

**34.1(6)** Verification of license fee is \$10.

**34.1(7)** Returned check fee is \$15.

**34.1(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

[Filed 12/6/01, effective 1/30/02]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

**ARC 1216B**

## REVENUE AND FINANCE DEPARTMENT[701]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue and Finance hereby adopts amendments to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIV, Number 9, page 644, on October 31, 2001, as **ARC 1064B**.

Iowa Code section 421.7 requires the Director of the Department of Revenue and Finance to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title XVI shall be 10 percent for the calendar year 2002 (0.8 percent per month). The Department will also pay interest at the 10 percent rate on refunds.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 30, 2002, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

Amend rule 701—10.2(421) by adopting the following **new** subrule:

**10.2(21)** Calendar year 2002. The interest rate upon all unpaid taxes which are due as of January 1, 2002, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2002. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2002. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2002.

[Filed 12/7/01, effective 1/30/02]

[Published 12/26/01]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/26/01.

**ARC 1215B****REVENUE AND FINANCE  
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax," and Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIV, Number 9, page 644, on October 31, 2001, as **ARC 1062B**.

Item 1 adopts new rule 42.16(422), which describes the ethanol blended gasoline tax credit and how that credit is computed. The ethanol blended gasoline tax credit is a new individual income tax credit available to retail dealers of gasoline when more than 60 percent of their sales of gasoline involve ethanol blended gasoline.

Item 2 adopts new rule 52.19(422) for the ethanol blended gasoline tax credit for corporation income tax purposes. This rule is similar to the rule in Item 1.

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

These amendments will become effective January 30, 2002, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 422 as amended by 2001 Iowa Acts, House File 716.

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 [42.16, 52.19] is being omitted. These rules are identical to those published under Notice as **ARC 1062B**, IAB 10/31/01.

[Filed 12/7/01, effective 1/30/02]

[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1213B****REVENUE AND FINANCE  
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXIV, Number 7, page 485, on October 3, 2001, as **ARC 0980B**.

Item 1 amends subrule 52.10(1) which provides for the elimination of the requirement that a partial property tax exemption be allowed for the actual value added by improvement to real property for qualification for the investment tax credit.

Item 2 amends rule 701—52.10(15) by adopting new subrule 52.10(4) which provides that an eligible business whose project involves value-added agricultural products, including cooperatives described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, may have unused investment tax credit refunded. To clarify the statutory provision, examples are included.

Item 3 amends an implementation clause.

Two changes have been made to the Notice of Intended Action. In Item 2, the third paragraph of new subrule 52.10(4) was amended to clarify the date when tax credit certificates will be issued based on rule changes made by the Iowa Department of Economic Development.

The paragraph now reads as follows:

"The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred."

In a second change to Item 2, another example, Example 6, has been added to clarify how the investment credit should be computed when a corporation files as a partnership for federal and Iowa income tax purposes. Example 6 reads as follows:

"EXAMPLE 6. Corporation F is a cooperative described in Section 521 of the Internal Revenue Code that completes a project involving ethanol in August 2002. Corporation F is a limited liability company that files a partnership return for federal income tax purposes. Corporation F is required to file an Iowa partnership return because Corporation F is not exempt from federal income tax. Corporation F has an investment tax credit of \$500,000 which must be claimed by the individual partners of the partnership based on their pro-rata share of individual earnings of the partnership. Corporation F expects a tax liability of \$200,000 for the individual partners. Corporation F may apply for a tax credit certificate in May 2003 for the unused credit of \$300,000. Corporation F must list the names of each partner and the ownership interest of each partner in order to allocate the investment credit for each partner. The tax credit certificate may be claimed on the partner's Iowa income tax return for the period ending December 31, 2003."

## REVENUE AND FINANCE DEPARTMENT[701](cont'd)

These amendments will become effective January 30, 2002, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 15.333(1) as amended by 2000 Iowa Acts, chapter 1213, section 1, and 2001 Iowa Acts, House File 349, section 1, and House File 716, section 1.

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 [52.10(1), 52.10(4)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 0980B**, IAB 10/3/01.

[Filed 12/7/01, effective 1/30/02]  
[Published 12/26/01]

[For replacement pages for IAC, see IAC Supplement 12/26/01.]

**ARC 1217B****TREASURER OF STATE[781]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 12.1 and 17A.9A, the Treasurer of State hereby adopts new Chapter

19, "Waiver and Variance Rules," Iowa Administrative Code.

The rules in Chapter 19 describe the procedures for applying for, issuing or denying waivers or variances from rules of the Treasurer of State. The purpose of this new chapter is to comply with Iowa Code section 17A.9A, which provides for the waiver or variance of administrative rules by state agencies.

Notice of Intended Action was published in the August 8, 2001, Iowa Administrative Bulletin as **ARC 0859B**. No public comment was received. The adopted rules are identical to those published under Notice of Intended Action.

The Treasurer adopted these rules on December 7, 2001.

These rules will become effective on January 30, 2002.

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 19] is being omitted. These rules are identical to those published under Notice as **ARC 0859B**, IAB 8/8/01.

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[For replacement pages for IAC, see IAC Supplement 12/26/01.]

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