

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 and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [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.

KATHLEEN K. WEST, Administrative Code Editor
STEPHANIE A. HOFF, Deputy Editor

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Schedule for Rule Making 2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
21	Friday, March 23, 2007	April 11, 2007
22	Friday, April 6, 2007	April 25, 2007
23	Friday, April 20, 2007	May 9, 2007

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.

*****Note change of filing deadline*****

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October 1, 2006, to June 30, 2007	\$246
January 1, 2007, to June 30, 2007	\$164
April 1, 2007, to June 30, 2007	\$ 82

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Attn: Nicole Navara
 Legislative Services Agency
 Miller Building
 Des Moines, IA 50319
 Telephone: (515)281-6766

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
DENTAL EXAMINERS BOARD[650]		
Public health settings, 10.5(1) IAB 2/28/07 ARC 5726B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	March 20, 2007 2 p.m.
Dental and dental hygiene examinations, 12.2, 12.4 IAB 2/28/07 ARC 5730B	Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	March 20, 2007 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Substitute authorization for paraeducators, 14.143 IAB 2/28/07 ARC 5764B	Rm. 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	March 21, 2007 1 p.m.
EDUCATION DEPARTMENT[281]		
Funding for children in state institutions or mental health institutes, 34.4, 34.11(9), 34.15 IAB 3/14/07 ARC 5767B	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 4, 2007 9 to 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Wastewater construction and operation permits, 64.3(4), 64.6, 64.15 IAB 2/28/07 ARC 5753B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 30, 2007 9 a.m.
Financial assurance for sanitary landfills, amendments to chs 103 to 106, 112, 114, 115, 118, 120 to 123 IAB 1/3/07 ARC 5633B	Fifth Floor West Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	March 28, 2007 10 a.m. to 12 noon
HISTORICAL DIVISION[223]		
Historical resource development program grants, ch 49 IAB 2/28/07 ARC 5759B	Third Floor West, Tone Board Rm. Historical Bldg. 600 E. Locust St. Des Moines, Iowa	March 21, 2007 10 a.m.
INSURANCE DIVISION[191]		
Cash refund of premium tax, 5.95 IAB 3/14/07 ARC 5778B	330 Maple St. Des Moines, Iowa	April 4, 2007 10 a.m.
LABOR SERVICES DIVISION[875]		
Open records; amusement rides; asbestos removal, 1.12(3), 61.2(9), 155.1 IAB 2/28/07 ARC 5756B	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	March 21, 2007 9 a.m. (If requested)

MEDICAL EXAMINERS BOARD[653]

Administrative and regulatory authority, 1.3(5), 1.6, 1.9 IAB 2/28/07 ARC 5722B	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	March 20, 2007 3 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Continuing education for optometrists, 181.3(2)“c” IAB 3/14/07 ARC 5771B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	April 3, 2007 9 to 9:30 a.m.
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Admission of undergraduate students, 1.1 IAB 2/28/07 ARC 5748B (ICN Network)	Room 8, Building 6 DMACC 2006 S. Ankeny Blvd. Ankeny, Iowa	March 30, 2007 4 to 6 p.m.
	Room 160, Scheman Bldg. Iowa State Center, ISU Corner of Elwood and Lincoln Way Ames, Iowa	March 30, 2007 4 to 6 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	March 30, 2007 4 to 6 p.m.
	Room 130A, Schindler Hall University of Northern Iowa Corner of Hudson Rd. and 23rd St. Cedar Falls, Iowa	March 30, 2007 4 to 6 p.m.
	Room 1, Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	March 30, 2007 4 to 6 p.m.
	ICN Rm., Burlington High School 421 Terrace Dr. Burlington, Iowa	March 30, 2007 4 to 6 p.m.
	Rm. 12, Ft. Dodge High School 819 N. 25th St. Ft. Dodge, Iowa	March 30, 2007 4 to 6 p.m.
	Rm. 1, Old Hospital Iowa Braille and Sight Saving School 1002 G Ave. Vinton, Iowa	March 30, 2007 4 to 6 p.m.
	Rm. A-123, Dubuque High School 1800 Clarke Dr. Dubuque, Iowa	March 30, 2007 4 to 6 p.m.
	Rm. 215, Sioux City East High School 5011 Mayhew Ave. Sioux City, Iowa	March 30, 2007 4 to 6 p.m.
	Rm. 2, Iowa School for the Deaf 3501 Harry Langdon Blvd. Council Bluffs, Iowa	March 30, 2007 4 to 6 p.m.

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Public improvement quotation process for governmental entities, ch 180 IAB 2/28/07 ARC 5724B	First Floor S. Conference Rm. Administration Bldg., DOT 800 Lincoln Way Ames, Iowa	March 22, 2007 10 a.m. (If requested)
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War orphans educational assistance fund, 1.10, ch 9 IAB 2/28/07 ARC 5719B (See also ARC 5718B)	Bldg. A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	March 22, 2007 10 a.m.
County grant program for veterans, ch 12 IAB 2/28/07 ARC 5721B (See also ARC 5720B)	Bldg. A6A, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	March 20, 2007 10 a.m.

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).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

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].

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ARC 5767B

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 34, "Funding for Children Residing in State Institutions or Mental Health Institutes," Iowa Administrative Code.

These amendments primarily provide secondary students in a mental health institute (Cherokee or Independence), the State Training School (Eldora), or the Iowa Juvenile Home (Toledo) the same access to Postsecondary Educational Options (dual credit courses) as any other secondary student in Iowa and provide the funding therefor. Secondly, the amendments change certain deadlines to conform to legislative changes to Iowa Code section 257.6(1), which was amended by 2006 Iowa Acts, chapter 1152, section 22.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before April 4, 2007, at 4:30 p.m. Comments on the proposed amendments should be directed to Steve Crew, Bureau of Children, Family and Community Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-6285; E-mail steve.crew@iowa.gov; or fax (515)242-6019.

A public hearing will be held on April 4, 2007, from 9 to 10 a.m., in the State Board Room, Second Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact and advise the Department of their specific needs by calling (515)281-5295.

These amendments are intended to implement Iowa Code section 257.6(1) and chapters 218 and 261C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 281—34.4(218) as follows:

281—34.4(218) Notification.

34.4(1) Students served at mental health institutes. The Mental Health Institute, Cherokee, Iowa, and the Mental Health Institute, Independence, Iowa, shall notify the district of residence of each child who on ~~the third Friday in September the date specified in Iowa Code section 257.6, subsection 1,~~ is residing in these institutions. The notification shall occur on ~~or after the third Friday in September and on or before the fourth Friday in September before October 10~~ and shall be in writing or in a printable electronic medium. The notification shall include the child's name, birth date, and grade

level and the names and addresses of the child's parents or guardians.

34.4(2) Students served at the State Training School at Eldora and the Iowa Juvenile Home at Toledo. The State Training School at Eldora and the Iowa Juvenile Home at Toledo shall notify the AEA in which the institution is located and the district of residence of each child who on ~~the third Friday in September the date specified in Iowa Code section 257.6, subsection 1,~~ is residing in these institutions if the child's release date is known and the release date is within the current school year. The notification shall occur on ~~or after the third Friday in September and on or before the fourth Friday in September before October 10.~~ For students served pursuant to an IEP, the State Training School at Eldora and the Iowa Juvenile Home at Toledo shall by the last Friday in October also notify the AEA in which the institution is located and the district of residence of each child residing in these institutions if the child's release date is known and the release date is within the current school year. Notifications shall be in writing or in a printable electronic medium and shall include the child's name, birth date and grade level and the names and addresses of the child's parents or guardians.

ITEM 2. Amend rule 281—34.11(218) by adding the following **new** subrule:

34.11(9) Dual credit course costs. Costs include the actual expenses, if reasonable and customary, for tuition, textbooks, course materials, and fees directly related to dual credit courses taken pursuant to rule 281—34.15(218,233A, 261C) by students who are residents of the state of Iowa.

ITEM 3. Adopt the following **new** rule:

281—34.15(218,233A,261C) Dual credit courses. Eleventh and twelfth grade students who attend an institution and are residents of the state of Iowa are eligible to be enrolled in college courses offered by an eligible postsecondary institution as defined in Iowa Code section 261C.3(1) and to receive both secondary and postsecondary credit therefor.

34.15(1) Noneligible courses. Postsecondary courses utilized in the attainment of an adult diploma or general equivalency diploma are not eligible for dual credit funding.

34.15(2) Eligible courses. Postsecondary courses eligible for funding hereunder must meet all of the following requirements. The course must be:

- a. Supplementing, not supplanting, courses offered at the institution.
- b. Included in the college catalog or an amendment or addendum to the catalog.
- c. Open to all registered college students, not just secondary students.
- d. Taught by a college-employed instructor.
- e. Taught utilizing the college course syllabus.
- f. Of the same quality as a course offered on a college campus.
- g. Nonsectarian.

34.15(3) Maximum number of college courses allowed. A student is allowed to take a maximum of three college courses during a semester, for a maximum of six college courses per regular school year, while the student is in attendance at the institution. College courses taken outside the regular school year shall not be funded under this chapter. If the student exceeds the course limit, the costs of the additional courses shall not be funded hereunder.

ARC 5769B**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, “Food Assistance Program Administration,” Iowa Administrative Code.

This amendment allows students whose work hours vary to qualify for Food Assistance as long as they average 20 hours of work per week. Students enrolled in an institution of higher education must meet at least one of the federal student eligibility criteria in order to receive Food Assistance. One way to meet the criteria is to work at least 20 hours each week and be paid wages. Instead of canceling or denying benefits, the Department has obtained a waiver from the U.S. Department of Agriculture Food and Nutrition Service to allow averaging of hours worked if there is a week in which the student works fewer than 20 hours.

This policy takes into account work schedules that fluctuate and may allow more students to qualify for Food Assistance. It will also promote efficiency in program administration by measuring a college student’s work hours in the same way that a participant’s work hours are measured to determine exemptions from work registration.

This amendment does not provide for waivers in specified situations, since it removes a restriction. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5768B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before April 4, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 234.12.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

ARC 5778B**INSURANCE DIVISION[191]****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 432.1(6), the Insurance Division hereby gives Notice of Intended Action to amend Chapter 5, “Regulation of Insurers—General Provisions,” Iowa Administrative Code.

Proposed new rule 191—5.95(432) establishes a mechanism whereby insurers that affirmatively demonstrate an inability to recoup funds paid via a credit and that meet other eligibility criteria may obtain a cash refund of premium tax paid.

A public hearing will be held at the offices of the Insurance Division at 10 a.m. on April 4, 2007. The Division is located at 330 Maple Street, Des Moines, Iowa 50319. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule.

Any interested person may make written comments on the proposed rule on or before April 3, 2007. Written comments may be sent to Pooja Thakur at the address listed above. Comments may also be submitted electronically to pooja.thakur@iid.state.ia.us.

This rule is intended to implement Iowa Code section 432.1(6).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend 191—Chapter 5 by adopting the following **new** rule:

191—5.95(432) Cash refund of premium tax. A cash refund of premium tax may be made to an insurance company that has paid a premium tax payment or prepayment and demonstrates an inability to recoup the funds paid via a credit, provided that the insurance division determines that a refund is appropriate. A claim for refund is a formal request made by the insurance company or its successor in interest to the insurance division for repayment of premium tax prepayments that were paid with the insurance company’s previously filed tax return. The claim for refund shall not be filed with a premium tax prepayment, annual tax payment, or with other documents or forms submitted to the division.

5.95(1) Eligibility criteria. Upon the written application of an insurance company or its successor in interest, the insurance division shall authorize the department of revenue to make a cash refund to an insurer if:

- a. The insurance company is subject to an order of liquidation or equivalent order issued by a court of competent jurisdiction; or
- b. The insurance company has not written any business in the state of Iowa for five years; or
- c. The insurance company’s certificate of authority is voluntarily or involuntarily surrendered or terminated; upon

INSURANCE DIVISION[191](cont'd)

application for a refund, the company shall be prohibited from applying for readmission in Iowa for at least five years; and

d. The insurance company has no insurer within its holding company which could utilize the credit.

5.95(2) Application procedure. An insurance company may file a claim for a cash refund with the insurance division by stating in detail the reasons and facts and including supporting documents with the claim for a cash refund. These documents shall include but not be limited to:

a. A written request applying for a cash refund and identifying the address where the cash refund should be mailed;

b. A copy of the tax return from which the premium tax credit originated;

c. A copy of the liquidation order or other documentation demonstrating that the insurance company's certificate of authority has been surrendered and that the company is prohibited from applying for admission in Iowa for at least five years; and

d. A certification from the chief executive officer stating that the company has no plans for writing business in the state of Iowa and agrees to notify the insurance division before writing any business in this state if the claim for refund is made pursuant to 5.95(1)"b."

5.95(3) Appeals. If the claim for refund is denied and the applicant wishes to appeal the denial, the insurance division will consider an appeal to be timely if filed not later than 30 days following the date of denial.

5.95(4) Statute of limitations. Upon meeting the eligibility criteria outlined in 5.95(1), an insurance company has up to five years to file an application for a refund. A refund will not be authorized if an application is not made within this time frame.

This rule is intended to implement Iowa Code section 432.1(6).

ARC 5771B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 181, "Continuing Education for Optometrists," Iowa Administrative Code.

The proposed amendment phases in requirements for continuing education relating to continuing education with examination (CEE) to assist in licensee portability.

Any interested person may make written comments on the proposed amendment no later than April 3, 2007, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on April 3, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present

their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **181.3(2)**, paragraph "c," as follows:

c. Required continuing education hours. Beginning with the July 1, 2008, biennium, therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for the biennium. If the licensee does not have current proof of CELMO certification, then the following are required in order to meet the continuing education requirement in paragraph 181.2(1)"b":

(1) Twenty hours required from COPE Category B (Ocular Disease and Management) with 4 of the 20 hours as continuing education with examination (CEE); and

(2) Twenty 20 hours required from COPE Category C (Related Systemic Disease) with 4 of the 20 hours as continuing education with examination (CEE); and with the following provisions:

1. Beginning with the July 1, 2008, biennium, licensees have the option to take 4 of the 40 hours as continuing education with examination (CEE). Two hours are suggested from Category B and 2 hours are suggested from Category C.

2. Beginning with the July 1, 2010, biennium, 4 of the 40 hours shall be taken as CEE. Two of the 4 hours shall be from Category B and 2 of the 4 hours shall be from Category C.

3. Beginning with the July 1, 2012, biennium, 8 of the 40 hours shall be taken as CEE. Four of the 8 hours shall be from Category B and 4 of the 8 hours shall be from Category C; and

(3) (2) Ten additional hours required from any of the COPE Categories of A (Clinical Optometry), B, C and D (Optometric Business Management). Hours obtained in Category D may not exceed 6 hours of the total continuing education hours requirement.

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:

March 1, 2006 — March 31, 2006	6.50%
April 1, 2006 — April 30, 2006	6.50%
May 1, 2006 — May 31, 2006	6.75%
June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%

ARC 5774B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 99D.22 and 159.5(11), the Department of Agriculture and Land Stewardship hereby amends Chapter 62, "Registration of Iowa-Foaled Horses and Iowa-Whelped Dogs," Iowa Administrative Code.

This amendment makes the rules consistent with a 2001 legislative change to the Iowa Code that provided that the breeder of a foal in the Iowa-foaled program is the owner of the brood mare at the time the foal is dropped. Prior to that time, the breeder of a standardbred or quarter horse foal was the owner at the time of breeding, while the breeder of a thoroughbred foal was the owner at the time the foal was dropped.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable. Notice and public participation would result in needless delay in updating the horse and dog standards specified in Iowa law.

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 should be made effective upon filing with the Administrative Rules Coordinator. The amendment confers a benefit to the public because it clarifies the standards to be used for Iowa-foaled race horses and makes the rules consistent with the Iowa Code.

No waiver provision is included in this amendment. The requirement contained in the rule reflects a statutory requirement which cannot be waived.

This amendment is intended to implement Iowa Code section 99D.22.

This amendment became effective February 19, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend rule **21—62.1(99D)** by striking the definitions of "breeder of a standardbred and quarter horse" and "breeder of a thoroughbred" and adopting the following **new** definition:

"Breeder of a foal" means the owner of the brood mare at the time the foal is dropped.

[Filed Emergency 2/19/07, effective 2/19/07]

[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5768B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

This amendment allows students whose work hours vary to qualify for Food Assistance as long as they average 20 hours of work per week. Students enrolled in an institution of higher education must meet at least one of the federal student eligibility criteria in order to receive Food Assistance. One way to meet the criteria is to work at least 20 hours each week and be paid wages. Instead of cancelling or denying benefits, the Department has obtained a waiver from the U.S. Department of Agriculture Food and Nutrition Service to allow averaging of hours worked if there is a week in which the student works fewer than 20 hours.

This policy takes into account work schedules that fluctuate and may allow more students to qualify for Food Assistance. It will also promote efficiency in program administration by measuring a college student's work hours in the same way that a participant's work hours are measured to determine exemptions from work registration.

This amendment does not provide for waivers in specified situations, since it removes a restriction. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment February 14, 2007.

The Department finds that notice and public participation on this amendment are contrary to the public interest. The Food and Nutrition Service approved this waiver to improve access to the Food Assistance Program. Preventing hunger by increasing the number of eligible Iowans who are participating in the Food Assistance Program is one of the goals in the Department's strategic plan. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the students affected by making it easier to qualify for Food Assistance. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 5769B** to allow for public comment.

This amendment is intended to implement Iowa Code section 234.12.

This amendment became effective on March 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Adopt **new** rule 441—65.26(234) as follows:

441—65.26(234) Eligible students. A student who is enrolled in an institution of higher education shall meet student eligibility criteria if the student:

1. Is employed for an average of 20 hours per week and is paid for this employment; or

HUMAN SERVICES DEPARTMENT[441](cont'd)

2. Is self-employed for an average of 20 hours per week and receives average weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

[Filed Emergency 2/15/07, effective 3/1/07]
[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5773B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of 2006 Iowa Acts, chapter 1115, section 19(2)(h), the Department of Human Services amends Chapter 153, "Funding for Local Services," Iowa Administrative Code.

The General Assembly in 2006 Iowa Acts, chapter 1115, division III, mandated that the Department change the administration of the State Payment Program from the Iowa Plan for some members and the Department local offices for others to administration by the county central point of coordination (CPC) administrators. This amendment implements this change.

In consultation with the Legislative Services Agency, the Department and the counties developed a methodology for distributing to the counties the funding appropriated for state fiscal year 2007 for county residents who receive State Payment Program services on and after October 1, 2006. The Department met with each county and determined that the amounts allocated to each county for the period from October 1, 2006, to July 1, 2007, did not exceed the funding available.

Under this amendment, people who do not have legal settlement in a county obtain mental health, mental retardation, or developmental disabilities services covered in the county management plan in the same manner as other county residents: They apply to the CPC; their cases are reviewed by the CPC; and their claims are paid by the CPC. The Department's role is limited to verifying the person's legal settlement and the availability of State Payment Program funding. Payments are released to counties based on reported claims paid for services to State Payment Program members.

This amendment, along with amendments to Chapter 88, "Managed Health Care Providers," was previously Adopted and Filed Without Notice and published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5288B**. Notice of Intended Action to solicit comment on those amendments was published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5282B**. An amended Notice of Intended Action scheduling public hearings on the amendments was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5451B**.

Further amendments to these rules were subsequently Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5419B**. Notice of Intended Action to solicit public comment on the subsequent amendments was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5418B**. Nine public hearings were held around the state. One person attended. In addition, written comments were received from four people, and comments were received through the Men-

tal Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission.

This filing is the adoption of all of these amendments to Chapter 153 following completion of the public comment period. The amendments to Chapter 88 are not included in this filing. [See **ARC 5770B** herein for the adoption of amendments to Chapter 88.] This amendment replaces the entire Division IV of Chapter 153 with a new Division that incorporates changes based on comments received and reflects a reorganization of the rules.

The major change reflected in this amendment is based on a recommendation by counties to discontinue the current system of quarterly payments for "ongoing" expenses with adjustments for new residents and "episodic" expenses. Revised subrule 153.56(3) implements a system for monthly reimbursement to counties based on reported actual expenses, with provisions for prospective payment if necessary to ensure sufficient funds for county cash flow. The prospective payment will be reconciled with the actual expenditures, and monthly payments may be reduced to spend down the balance of prospective funds. This change simplifies the payment process and reduces the paperwork flow between the state and the counties.

Additional changes made to Division IV of Chapter 153 are summarized as follows:

- Elimination of the definition of "completed application" in rule 441—153.51(331), since the term is defined more specifically in subrule 153.53(2) to include three elements: a client profile report, a copy of the legal settlement worksheet, and a funding request, preferably in electronic format.
- Elimination of the definition of "application date" in rule 441—153.51(331), since the term is defined more specifically in subrule 153.53(4).
- Elimination of the definitions of "division administrator" and "personal representative" in rule 441—153.51(331), since those terms are no longer used in the chapter.
- Reorganization of rule 441—153.52(331) to delineate eligibility factors more clearly.
- Addition of new language in paragraph 153.53(1)"a" to indicate the procedure to follow when an applicant has no clear county of residence.
- Integration of language into the rule on eligibility determination, 441—153.54(331), to clarify the county's role in determining service eligibility and the Department's role in verifying legal settlement and the availability of funding. The provision on application of county waiting lists is moved to paragraph 153.54(1)"b" to clarify that this is a county responsibility. The word "shall" is substituted for "may" in the provision concerning the institution of a waiting list due to lack of state funding (153.54(2)"b"), and a requirement is added for the Department to notify counties if a statewide waiting list is imposed.
- Revision of language in subrule 153.53(2) to limit and clarify application requirements. References to the Services Reporting System are replaced with generic references, since the name of the data processing system used by the Department does not have to be specified in rules. Requirements that additional narrative be included with the application are eliminated.
- Revision of language in subrule 153.53(4) to simplify the policy regarding the application date to reflect the changes in subrule 153.53(3) and to specify that the application date cannot be earlier than October 1, 2006. The time limit for acceptance of the CPC application date is extended from 15 to 60 business days.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Addition of language to subrule 153.54(3) specifying the duration of eligibility.
- In rule 441—153.55(331), deletion of a reference to Department service casework rules and of the requirements for the member to be receiving services “actively and routinely.”
- Elimination of language on redetermination of eligibility, since the language referred to departmental administrative requirements that no longer apply.
- Addition of language in paragraph 153.56(1)“b” to specify the date by which the CPC’s monthly report of service expenditures is to be submitted. Adjustments have been made to the list of data required in the report.
- Elimination of requirements for CPC reporting and discharge procedures to conform to changes made to subrule 153.56(3) and addition of a new paragraph “c” in subrule 153.56(1) to require the CPC to include data on State Payment Program payments in the annual data warehouse report.
- Revisions to subrule 153.56(2) to eliminate the requirement to maintain demographic data on members, amend the requirements for closing a case to conform to changes made to 153.54(2), and add requirements for notifying the county of the member identification number and for verifying receipt of the counties’ monthly payment report files.
- Elimination of subrules on eligibility termination and notification in rule 441—153.57(331). These provisions are unnecessary due to the change in subrule 153.54(3) on the duration of eligibility and the transfer of eligibility determination to the county.
- Addition of language about the institution of a waiting list due to encumbrance of state funds to the list of appealable actions in subrule 153.58(1).
- Revision of the implementation clause to refer to Iowa Code section 331.440.

This amendment does not provide for waivers in specified situations. Requests for the waiver of a rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted this amendment on February 15, 2007.

The Department finds that this amendment confers a benefit on county governments by streamlining payment procedures. Therefore, this amendment is adopted pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code section 331.440 as amended by 2006 Iowa Acts, chapter 1115, division III.

This amendment became effective March 7, 2007, at which time the amendments to Chapter 153 that were Adopted and Filed Without Notice and Adopted and Filed Emergency were rescinded.

The following amendment is adopted.

Rescind **441—Chapter 153, Division IV**, and adopt **new Division IV** in lieu thereof:

DIVISION IV

STATE PAYMENT PROGRAM FOR LOCAL MENTAL HEALTH,
MENTAL RETARDATION, AND DEVELOPMENTAL DISABILITIES
SERVICES TO ADULTS WITHOUT LEGAL SETTLEMENT

PREAMBLE

The state payment program provides 100 percent state funds to pay for local mental health, mental retardation, and developmental disabilities services for eligible adults who have no legal settlement in Iowa. The state payment program is intended to enable all eligible residents to receive services from the county mental health, mental retardation and developmental disabilities services fund through the county central point of coordination, regardless of the resident’s legal settlement status.

Three basic principles underlie the state payment program.

First, duration of residency, including legal settlement, is not an eligibility factor for local mental health, mental retardation, and developmental disabilities service programs. The state payment program ensures that each of the local mental health, mental retardation, and developmental disabilities services provided by an Iowa county to residents who have legal settlement is also available to residents of that county who do not have legal settlement.

Second, each state is responsible to provide care and services for its own residents. Iowa provides for residents of Iowa.

Third, one’s own family is of primary importance to one’s well-being. Thus, the state payment program emphasizes that care and services for a person be provided near the person’s own family, unless this is contraindicated or impossible to provide.

441—153.51(331) Definitions.

“Adult” means a person who is 18 years of age or older and is a United States citizen or a qualified alien as defined in 8 U.S.C. §1641.

“Applicant” means a person for whom payment is requested from the state payment program.

“Approved county management plan” means the county plan for mental health, mental retardation, and developmental disabilities services developed pursuant to Iowa Code section 331.439 that has been approved by the department’s director.

“Central point of coordination” or “CPC” means the administrative entity designated by a county board of supervisors or by the boards of supervisors of a consortium of counties to act as the single entry point to the service system established under an approved county management plan.

“County of residence” means the county in Iowa where, at the time an adult applies for or receives services, the adult is living and has established an ongoing presence with the declared, good-faith intention of living permanently or for an indefinite period. The county of residence of an adult who is a homeless person is the county where the adult usually sleeps.

“Department” means the Iowa department of human services.

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

“Homeless person” means a person who lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is one of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations.
2. An institution that provides a temporary residence for persons intended to be institutionalized.
3. A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

HUMAN SERVICES DEPARTMENT[441](cont'd)

“Legal representative” means a person recognized by law as standing in the place or representing the interests of another; for example, a guardian, conservator, custodian, parent of a minor, or the executor, administrator or next of kin of a deceased person.

“Legal settlement” is a legal status as defined in Iowa Code sections 252.16 and 252.17.

“Member” means a person authorized by the division to receive benefits from the state payment program.

“Provider” means a provider of mental health, mental retardation, or developmental disabilities services that has a valid contract for the service with a county to provide services under a county management plan.

“Resident,” for purposes of division IV of this chapter, means a person who is present in the state and who has established an ongoing presence with the declared, good-faith intention of living in Iowa permanently or for an indefinite period.

441—153.52(331) Eligibility requirements. To be eligible for the state payment program, an applicant must meet all of the following conditions.

153.52(1) Adult status. The applicant shall be an adult as defined in 441—153.51(331).

153.52(2) Residency. The applicant shall be a resident of Iowa, present in the state and without legal settlement in an Iowa county. The applicant shall not be in Iowa for purposes of a visit or vacation nor be traveling through the state to another destination at the time of application for services.

153.52(3) Eligibility under county management plan. The applicant shall meet the eligibility criteria established in the approved county management plan for the applicant’s county of residence.

153.52(4) Payment source. The applicant shall have no other political entity, organization, or other source responsible for provision of or payment for the needed services nor be eligible to have the service funded or provided at no additional cost to the state by another state-funded or federally funded facility or program. The department may, on a case-by-case basis, attempt collection from a legally responsible entity.

441—153.53(331) Application procedure.

153.53(1) Initiation of application. The county CPC or the CPC’s designee shall be responsible for applying for state payment program funding for any person residing in that county who may be eligible.

a. When an applicant is awaiting discharge from a state mental health institute or state resource center, the facility’s social worker shall initiate the application and forward it to the CPC of the applicant’s county of residence for completion. If the applicant has no clear county of residence, the application shall be forwarded to the county where the applicant intends to establish residency upon discharge. This county may be designated by the applicant’s declaration.

b. Applications shall be made only with the knowledge and consent of the applicant or the applicant’s legal representative.

153.53(2) Application requirements. The CPC or the CPC’s designee shall complete the application, preferably in electronic format. A complete application shall include:

a. A funding request for the applicant showing the total monthly dollar amount needed for services;

b. A copy of a legal settlement worksheet that is completed in accordance with provisions of Iowa Code chapter 252 and other applicable laws and rulings of courts; and

c. The client profile report (or equivalent) from a CPC application that contains information necessary for the divi-

sion to enter the member into the data system used for payment processing.

153.53(3) Application submission. The CPC or the CPC’s designee shall submit the complete application as defined in subrule 153.53(2) to the division within 15 business days of the date the CPC or designee receives a completed and signed CPC application form containing a properly completed legal settlement worksheet.

153.53(4) Application date. The date of application is the date of the CPC application form, the date on court documents, or October 1, 2006, whichever is later. This date may be used as the effective date of eligibility when the complete application is received in the division within 60 business days of the CPC application date or the date on court documents.

441—153.54(331) Eligibility determination.

153.54(1) Approval by county.

a. The CPC or the CPC’s designee shall determine whether an applicant is eligible for services based on the eligibility guidelines contained in the approved county management plan for the applicant’s county of residence.

b. The county shall apply any policies and procedures regarding waiting lists to state payment program applicants in the same manner as it applies them to persons who have legal settlement in that county.

153.54(2) Certification by the department. Within 15 business days after receipt of a complete application as specified in subrule 153.53(2), division staff shall certify the applicant’s eligibility for the state payment program to the central point of coordination.

a. The applicant’s legal settlement status shall be ascertained in accordance with Iowa Code sections 252.16 and 252.17 and with other applicable laws, rulings of courts and opinions of the Iowa attorney general.

b. The division shall institute a waiting list for state payment program clients if the appropriation becomes fully encumbered. The division shall promptly notify all counties if a waiting list is to be instituted because of a lack of state funding.

153.54(3) Effective date of eligibility.

a. An applicant’s eligibility for state payment program funding shall be effective from the date of application.

b. A member shall remain eligible until:

(1) The member has not received services for 12 months; or

(2) The CPC in the county of residence notifies the state payment program manager that the member is no longer eligible.

153.54(4) Notification of eligibility decisions. The CPC or the CPC’s designee shall notify the applicant or member of the following decisions in accordance with CPC requirements and procedures:

a. Certification of the applicant’s eligibility.

b. A change in a member’s services, including termination of service.

441—153.55(331) Eligible services. Services eligible for reimbursement under the state payment program are the services defined in the approved county management plan of the applicant’s county of residence.

153.55(1) Purchased services.

a. Service management may be provided through a county CPC process during the period for which services are paid.

b. The county may pay for services as long as the member is eligible and the following criteria are met:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) The member is receiving a service that requires funding from the state payment program.

(2) The service is provided under the approved county management plan of the member's county of residence.

(3) The member's county of residence provides or pays for the service from the county mental health, mental retardation, and developmental disabilities services fund for persons who have legal settlement in the county.

(4) Service providers bill the other payment systems for which the member is eligible before billing the county of residence.

153.55(2) Excluded costs. The following costs are excluded from payment by the state payment program:

a. Services received before the effective date of eligibility.

b. The cost of local services that the member is eligible to have funded by private sources or by other state or federal programs or funds such as medical assistance program services or services provided in a state institution.

441—153.56(331) Program administration.

153.56(1) CPC responsibilities.

a. Financial participation on the part of the member shall be governed by the financial participation provisions of the approved county management plan of the member's county of residence.

b. The CPC or the CPC's designee shall submit to the division's state payment program manager by the fifth business day of each month a report on the eligible services paid for during the previous month. The report shall be submitted electronically and shall include the following data in each record:

(1) The calendar month and year in which the county made the payment.

(2) The name of the county submitting the information.

(3) The member's name.

(4) The member's state identification number.

(5) The member's identification number as assigned under subparagraph 153.56(2)“a”(2).

(6) The member's diagnostic group code.

(7) The provider's name.

(8) The chart of accounts code for each service paid.

(9) The number of units paid (if applicable).

(10) The beginning date of each service for which the county paid.

(11) The ending date of each service for which the county paid.

(12) The dollar amount paid.

c. The CPC or the CPC's designee shall include payments made on behalf of members in the data warehouse annual reports required by 441—Chapter 25, Division IV.

153.56(2) Department responsibilities. As the sponsoring agency, the department shall be responsible for:

a. Enrolling members as necessary to produce payment to the counties, including:

(1) Maintaining member information in the data system for payment;

(2) Notifying counties of the member identification number required for billing; and

(3) Closing data system files on members as directed by the counties, or when the member has not had any payments processed for a 12-month period.

b. Verifying receipt of monthly payment report files. Within 15 business days of receipt of each county's monthly payment report file, the department shall:

(1) Identify the county's payment amount for that month and the number of clients included in the payment; and

(2) Notify the county of any clients whose costs were denied and the reason for the denial.

c. Generating and reconciling payments to the counties.

d. Receiving and auditing reports of member activity and expenditures from the counties.

153.56(3) Payment to counties. The following policies shall govern payment to counties for services furnished to members:

a. Monthly payment. Beginning in May 2007, the department shall make a monthly payment to each county based on the expense report for the previous month that was submitted by the county pursuant to paragraph 153.56(1)“b.” The department shall process monthly payments by the twentieth day of each month.

b. Prospective payment. The department may make a prospective payment to the county for cash flow purposes by July 10 of each year.

(1) The prospective payment shall be based on the sum of the expense reports that the department received from the county in April, May, and June of that year.

(2) For the state fiscal year ending June 30, 2007, the payments made to the county on or before April 1, 2007, shall be considered the prospective payment.

c. Payment reconciliation. The department and counties shall reconcile the total of the prospective payment and monthly payments made to a county with the total actual expenses paid by the county for that same period.

d. Payment adjustment. Beginning in April of each year, the department may adjust the monthly payment to the county to:

(1) Spend down the balance of the prospective payments previously made; or

(2) Make additional payment to ensure that the county has sufficient moneys for cash flow purposes.

e. Deductions. For the state fiscal year ending June 30, 2007, moneys that the county received but did not expend, according to the report required by paragraph 153.56(1)“b,” shall be deducted from the county's subsequent payment.

441—153.57(331) Reduction, denial, or termination of benefits. The member's state payment program benefits may be denied, terminated or reduced according to the provisions of the approved county management plan of the member's county of residence.

441—153.58(331) Appeals.

153.58(1) Decisions regarding eligibility of any applicant, decisions regarding instituting a waiting list because the appropriation has been fully encumbered, and decisions adversely affecting applicants or members who are not eligible may be appealed pursuant to 441—Chapter 7.

153.58(2) Decisions (other than eligibility) adversely affecting applicants or members shall be appealed pursuant to the county CPC's appeal provisions.

These rules are intended to implement Iowa Code section 331.440 as amended by 2006 Iowa Acts, chapter 1115, division III.

[Filed Emergency After Notice 2/16/07, effective 3/7/07]

[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5777B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 162.16, the Department of Agriculture and Land Stewardship hereby amends Chapter 67, "Animal Welfare," Iowa Administrative Code.

This amendment establishes a procedure to permit a registered animal shelter or a registered pound to apply to the Iowa Department of Agriculture and Land Stewardship to become a fostering oversight organization. This designation would allow the shelter or pound to utilize foster care homes as part of its program for caring for abandoned or surrendered animals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 20, 2006, as **ARC 5623B**. Several comments were received. Some comments were in support of the proposed rule. Other comments either opposed the proposed rule or expressed concerns with some provisions of it. The adopted amendment includes several changes to address concerns raised. These changes include:

1. Subrules 67.12(2) and 67.12(4) are changed to clarify that the new rule applies only to registered pounds and registered animal shelters.

2. Subrules 67.12(5) and 67.12(6) are changed to lessen concerns about an increase in paperwork for both the registrants and the Department.

3. Subrule 67.12(8) is changed by replacing the limitation of 10 foster care homes per species with a limitation of up to 20 foster care homes permitted regardless of species. In addition, language is added to permit the Department to approve the use of more than 20 foster care homes if the Department determines that the fostering oversight organization has adequate staff to provide oversight of the foster care homes.

4. Subrule 67.12(9) is changed to clarify that the limitation on the number of animals in a foster care home applies only to fostered animals. In addition, there is a change that explains how a nursing litter and its mother should be counted toward the limitation. Finally, a clarification is made that the approval of a foster care home does not override a local governmental body's animal limitations.

5. Subrule 67.12(11) has been added establishing the manner in which a sexually intact animal should be handled in foster care.

In addition, the term "licensed" has been changed to "registered" throughout rule 67.12(162) to match the language in Iowa Code section 162.3.

No waiver provision is included in this amendment because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to this amendment.

This amendment is intended to implement Iowa Code chapter 162.

This amendment shall become effective on April 18, 2007.

The following amendment is adopted.

Amend 21—Chapter 67 by adopting the following **new** rule:

21—67.12(162) Fostering oversight organizations and foster care homes.

67.12(1) As used in this rule, unless the context otherwise requires:

"Foster care home" means a private residence that is authorized to provide temporary shelter and care for an animal which has been accepted by a fostering oversight organization.

"Fostering oversight organization" means a registered animal shelter or a registered pound, as defined in Iowa Code chapter 162, which has been authorized by the department to utilize foster care homes in its operation.

67.12(2) A registered animal shelter or registered pound shall not operate a foster care home or operate an organization that utilizes a foster care home unless the shelter or pound is in compliance with this rule and other applicable provisions of this chapter and Iowa Code chapter 162.

67.12(3) A registered animal shelter or registered pound may apply to the department for a permit authorizing the shelter or pound to utilize one or more foster care homes in carrying out its mission of providing for the care and maintenance of an animal which has been taken in or entrusted to the animal shelter or pound. For purposes of this rule, an animal shelter or pound which has been granted such authorization shall be considered a fostering oversight organization.

67.12(4) Neither a registered animal shelter nor a registered pound may utilize a foster care home unless the shelter or pound has been granted authorization by the department to be a fostering oversight organization. An animal shelter or pound which uses a foster care home without first obtaining a permit authorizing the shelter or pound to be a fostering oversight organization shall be considered to be operating illegally, shall be subject to suspension or revocation of its license to operate, and may be subject to other penalties authorized in Iowa Code chapter 162.

67.12(5) A registered animal shelter or registered pound seeking to obtain a permit to be a fostering oversight organization shall make application to the department on a form prescribed by the department. When feasible, the application shall be submitted to the department at the same time that the registered animal shelter or registered pound submits its certificate of registration renewal application. The permit application shall provide sufficient information to allow the department to determine the ability of the proposed fostering oversight organization to provide adequate screening and oversight of any foster care home operating under the authority of the fostering oversight organization. Such application shall include, but is not limited to, the following information:

a. The proposed fostering oversight organization's plan for screening a prospective foster care home. Such plan shall include the criteria to be used by the fostering oversight organization in determining whether a person who will be operating a foster care home is capable of caring for the animals that may be placed in the foster care home.

b. The proposed fostering oversight organization's plan for providing oversight to the foster care home. The plan shall include the frequency of inspections of the foster care home by the fostering oversight organization and the criteria to be used by the fostering oversight organization in reviewing the foster care home during periodic inspections. The plan shall also include the actions to be taken by the fostering oversight organization in the event that the fostering oversight organization determines that the foster care home is not adequately providing for the animals in the foster care home.

c. The name, address, and telephone number of the staff person connected with the proposed fostering oversight organization who will have primary responsibility for administering the proposed foster care program.

d. The name, address, and telephone number of a secondary staff person connected with the proposed fostering oversight organization who will have responsibility for adminis-

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tering the proposed foster care program in the absence of the primary administrator.

67.12(6) The initial approval of a fostering oversight organization shall be in effect only until the next expiration date of the registered pound or registered animal shelter's license. Thereafter, a fostering oversight organization permit renewal shall be concurrent with the facility's certificate of registration renewal, unless circumstances otherwise require.

67.12(7) A fostering oversight organization shall require that all persons seeking to operate a foster care home under the fostering oversight organization submit a written application to the fostering oversight organization specifying the proposed foster care home's qualifications, including, but not limited to, the ability of the foster care home to provide adequate care, exercise, feed, water, shelter, space, and veterinary care.

67.12(8) A fostering oversight organization shall not be authorized to approve more than 20 foster care homes. In granting a permit to a fostering oversight organization, the department may further restrict the number of foster care homes a particular fostering oversight organization may utilize if the department determines that the fostering oversight organization does not have adequate personnel to supervise the number of foster care homes for which authorization was sought. The department may authorize the fostering oversight organization to approve more than 20 foster care homes only if the department finds that the fostering oversight organization has and maintains adequate personnel assigned to provide sufficient oversight of foster care homes.

67.12(9) A fostering oversight organization shall not authorize a foster care home to have in its care more than 4 foster care animals over four months of age or 12 foster care animals less than four months of age, unless the foster care animals less than four months of age are from no more than two biological litters. When a nursing litter is placed in a foster care home, the nursing mother shall not be counted toward any applicable animal limitations for two weeks after the litter is weaned. Any approval of a foster care home shall not be interpreted to limit or override any local government's limitations on the number of animals that may be kept on a single premises.

67.12(10) A person who has been found to have engaged in or participated in an act constituting animal abandonment, neglect, cruelty, or abuse shall not be authorized to operate a foster care home. In addition, if a person has had a license or permit issued under Iowa Code chapter 162 or under the United States Department of Agriculture's animal care program revoked or has surrendered that person's license in lieu of revocation, then that person shall not be authorized to operate a foster care home.

67.12(11) A fostering oversight organization shall not place a sexually intact animal in a foster care home where there is a sexually intact animal of the opposite sex of the same species, unless the fostering oversight organization determines that the fostered animal is too young to breed. If the fostering oversight organization determines that a sexually intact animal may be placed in a foster care home with another sexually intact animal of the opposite sex of the same species because the fostered animal is too young to breed, then the fostering oversight organization shall monitor the physical development of the fostered animal to either remove the animal before it is capable of breeding or to neuter or spay the fostered animal.

67.12(12) The fostering oversight organization shall retain a copy of all the following documents for a period of 24 months and shall make such documents available for inspection by the department during regular business hours:

a. Applications to operate a foster care home, including any written approvals, conditional approvals, or denials.

b. Inspections or other reports relating to the operation of a foster care home.

c. Any written complaints or notes written by staff of the fostering oversight organization relating to an oral complaint against a foster care home.

d. Any documents relating to the investigation or other resolution of a complaint regarding a foster care home.

e. Any documents relating to the revocation or suspension of a foster care home's authorization.

67.12(13) The fostering oversight organization shall maintain detailed records as to which animals have been placed in a foster care home, when each animal was placed in a foster care home, and the ultimate disposition of each animal.

67.12(14) All adoptions and euthanasias of animals placed in a foster care home shall be the responsibility of the fostering oversight organization and shall not be performed by the foster care home, unless an emergency euthanasia must be performed by a licensed veterinarian to prevent the needless suffering of the animal.

67.12(15) All deaths, injuries, or emergency euthanasias occurring within a foster care home shall be reported to the fostering oversight organization within 24 hours of the event.

67.12(16) It is the primary responsibility of the fostering oversight organization to provide for oversight and regulation of its foster care homes; however, the department may choose to inspect a foster care home if the department determines that it would be in the best interests of the animals being maintained in the foster care home to conduct the inspection or if the department deems an inspection is desirable to determine whether a fostering oversight organization is properly fulfilling its role of screening and oversight of foster care homes. If the department determines that either serious or chronic problems exist in a foster care home, the department may order the fostering oversight organization to suspend or rescind the authorization of the foster care home. The fostering oversight organization shall immediately obtain physical examinations of all animals previously placed in the foster care home.

67.12(17) If the department determines that a fostering oversight organization is not providing adequate screening or oversight of its foster care homes, then the department may suspend or rescind the fostering oversight organization's authorization to use foster care homes.

67.12(18) If the department suspends or revokes the license of an animal shelter or pound and that animal shelter or pound is also a fostering oversight organization, then the authorization of the animal shelter or pound to operate as a fostering oversight organization shall immediately cease, and the authorization of the foster care homes operating under that fostering oversight organization shall also immediately cease.

This rule is intended to implement Iowa Code chapter 162.

[Filed 2/21/07, effective 4/18/07]

[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5766B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education amends Chapter 120, "Early ACCESS Integrated System of Early Intervention Services," Iowa Administrative Code.

The amendments clarify the definition of "parent" and clarify that a child's education records, as defined by the federal regulations that expand on the Family Educational Rights and Privacy Act in 34 CFR Part 99, may be transmitted between appropriate agencies without parental consent.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the January 3, 2007, Iowa Administrative Bulletin as **ARC 5632B**. No public hearing was held; no written or oral comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 256B and 20 U.S.C. Sections 1400-ff.

These amendments shall become effective April 18, 2007.

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 [120.4, 120.59] is being omitted. These amendments are identical to those published under Notice as **ARC 5632B**, IAB 1/3/07.

[Filed 2/12/07, effective 4/18/07]
[Published 3/14/07]

[For replacement pages for IAC, see IAC Supplement 3/14/07.]

ARC 5770B**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 81, "Nursing Facilities," Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," and Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments streamline provider enrollment policies by combining nine Medicaid provider enrollment forms into a single application form. Combining enrollment forms is expected to streamline enrollment procedures, apply policy more consistently, and eliminate confusion. Revised Form 470-0254, Iowa Medicaid Provider Enrollment Application, will eliminate the use of the following forms:

- Form 470-2966, Noninstitutional Medicaid Provider Application;
- Form 470-2967, Institutional Medicaid Provider Enrollment;
- Form 470-2968, Equivalency Form;

- Form 470-2969, Federally Qualified Health Professionals Listing;
- Form 470-2970, Group Practice Information;
- Form 470-2971, Rehabilitation Agency Information Sheet;
- Form 470-2976, Medicaid Provider Application for Hospices, HMOs, and Enhanced Service Providers; and
- Form 470-3819, Rehabilitation Services for Adults with Chronic Mental Illness Provider Application.

These amendments require Medicaid providers to use their national provider identifier number, in compliance with federal regulations. Use of the national identifier number will allow for consistency across states in the identification of providers that furnish services to patients. Certain "atypical" providers will not be issued a national provider identifier number and will continue to use an Iowa-specific provider identifier number.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on December 20, 2006, as **ARC 5626B**. The Department received one comment on the Notice of Intended Action, which did not affect the wording of the amendment. These amendments are identical to those published under Notice of Intended Action.

This filing also includes the regular adoption of amendments to rule 441—88.61(249A) and subrules 88.63(3) and 88.68(2) that, along with amendments to Chapter 153, were previously Adopted and Filed Without Notice as part of changes to the State Payment Program and were published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5288B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin as **ARC 5282B** on the same date. [See **ARC 5773B** herein for adoption of amendments to Chapter 153.] The Department received no comments on the amendments to Chapter 88. These amendments are identical to those Adopted and Filed Without Notice and published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations. The Department has general procedures for requesting an exception to policy at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on February 14, 2007.

These amendments are intended to implement Iowa Code chapter 249A.

These amendments shall become effective May 1, 2007, at which time the Adopted and Filed Without Notice amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—79.14(249A) as follows:

Rescind subrule 79.14(1) and adopt the following **new** subrule in lieu thereof:

79.14(1) Application request. A provider of medical or remedial services that wishes to enroll as an Iowa Medicaid provider shall begin the enrollment process by contacting the provider services unit at the Iowa Medicaid enterprise to request an application form.

a. A nursing facility shall also complete the process set forth in 441—subrule 81.13(1).

b. An intermediate care facility for persons with mental retardation shall also complete the process set forth in 441—subrule 82.3(1).

Amend subrules 79.14(2) and 79.14(6) as follows:

79.14(2) Submittal of application. The provider shall submit the appropriate application forms to the Iowa Medi-

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caid enterprise provider services unit at P.O. Box 36450, Des Moines, Iowa 50315.

a. Providers of home- and community-based waiver services shall submit Form 470-2917, Medicaid HCBS Provider Application, at least 90 days before the planned service implementation date.

b. All other providers shall submit Form 470-0254, Iowa Medicaid Provider Enrollment Application.

c. The application shall include the provider's national provider identifier number or shall indicate that the provider is an atypical provider that is not issued a national provider identifier number.

79.14(6) Providers approved for certification as a Medicaid provider shall complete ~~Form 470-2965, Agreement Between Provider of Medical and Health Services and Iowa Department of Human Services Regarding Participation in Medical Assistance Program~~ a provider participation agreement as required by rule 441—79.6(249A).

ITEM 2. Amend paragraph **81.13(1)“b”** as follows:

b. The facility shall request an application, Form ~~470-2967~~ 470-0254, Institutional Iowa Medicaid Provider Enrollment Application, from the Iowa Medicaid enterprise provider services unit.

ITEM 3. Amend paragraph **82.3(1)“b”** as follows:

b. The facility shall request an application, Form 470-0254, Institutional Iowa Medicaid Provider Enrollment Application, from the ~~department~~ Iowa Medicaid enterprise provider services unit.

ITEM 4. Amend subparagraph **88.44(3)“a”(1)** as follows:

(1) The request shall identify the provider by name, address, telephone number, specialty, and Medicaid provider number, *indicating the practice location*, or date of application to be a Medicaid provider. The request shall specify the ~~recipients~~ members in question and state agreement to provide primary care and patient management as specified in subrule 88.45(2) to the ~~specific recipients in question~~ those members.

ITEM 5. Amend subrule 88.48(3) as follows:

88.48(3) Authorizing managed services. ~~Referrals may be made by the~~ The patient manager may make referrals to another provider for specialty care or for primary care during the patient manager's absence or nonavailability.

a. No special authorization or referral form is required, and referrals should occur in accordance with accepted practice in the medical community. To ensure that payment is made for properly authorized services, the patient manager shall provide the specialist or other provider with the patient manager's Medicaid provider number (*the national provider identifier number or Iowa-specific provider identifier number*), which must be entered on the billing form to signify that the service has been authorized.

b. After the patient manager's initial referral of a patient to a specialist for ongoing treatment, the specialist shall not be required to receive further specific authorizations for the duration of the illness, or at the discretion of the patient manager, for a period of time specified by the patient manager.

c. The referral shall include necessary services rendered by the specialist and referrals for related services made by the specialist. With the patient manager's approval, the patient manager's number may be relayed by the referred specialist to other providers considered necessary for proper treatment of the patient. All authorizations and referrals shall be docu-

mented by both the patient manager and the referred-to provider in the patient's medical record.

d. Emergency services are excluded from the authorization requirement, even though these services may be ones customarily requiring authorization under patient management. Urgent care requires authorization in order for Medicaid services to be paid. The unauthorized use of a patient manager's authorization number shall be considered to be a false or fraudulent claim submission and may subject the provider to recoupment or to sanctions described at 441—subrule 79.2(3).

ITEM 6. Amend subrule 88.49(1) as follows:

88.49(1) Written record. The department or its designee shall maintain a written record of all grievances. A log shall be maintained that includes the date of the grievance, ~~recipient~~ member name and state identification number, provider name and national provider identifier number or Iowa-specific provider identifier number, nature of complaint, resolution and date of resolution.

ITEM 7. Amend rule ~~441—88.61(249A)~~ as follows:

Amend the definitions of “accredited,” “appeal,” “clinical decision review,” “enrollment area,” and “member” as follows:

“Accredited” shall mean an entity approved by the division of mental health and developmental disabilities *disability services* of the department to provide mental health services.

“Appeal” shall mean the process defined in 441—Chapter 7 by which a Medicaid beneficiary or other recipient of services through the department member, or the recipient's member's designee, may request review of a certain decision made by the department or the contractor.

“Clinical decision review” shall mean the process by which enrollees, members, and participating and nonparticipating providers may request a review by the contractor of a decision made by an employee of the contractor regarding the prior authorization, denial, or payment for services.

“Enrollment area” shall mean the geographical area in which the enrollees and members that are assigned by the department to the contractor reside.

“Member” shall be mean a person determined eligible for the state payment program by the division of mental health and developmental disabilities and designated by that division for inclusion in the Iowa Plan Medicaid.

Rescind the definitions of “beneficiary” and “state payment program.”

Amend the definitions of “capitation rate,” “contractor,” “coverage group,” “enrollee,” “enrollment” by striking the words “beneficiary” and “beneficiaries” and inserting the word “member” or “members” in lieu thereof.

ITEM 8. Amend paragraph **88.62(1)“a”** and subrules **88.63(2)**, **88.63(5)**, **88.63(6)**, **88.71(2)**, and **88.72(2)** by striking the words “beneficiary” and “beneficiaries” and inserting the word “member” or “members” in lieu thereof.

ITEM 9. Amend subrule 88.63(3) as follows:

88.63(3) Others to be served. ~~The department shall include persons in the state payment program in the Iowa Plan.~~ The department may include other recipients of mental health and substance abuse services in the Iowa Plan. The department shall specify in the contract the services, persons to be served, and reimbursement methodology when other recipients are included.

ITEM 10. Amend subrule 88.68(2) as follows:

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88.68(2) Appeal to department. Enrollees ~~and members~~ may appeal clinical care decisions in accordance with the appeal process available to all persons receiving Medicaid-funded services as set forth in 441—Chapter 7 if the enrollee ~~or member~~ is not satisfied with the final decision rendered by the contractor through the contractor's clinical decision review process.

[Filed 2/15/07, effective 5/1/07]
[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5780B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

This amendment broadens the rule on the health insurance data match program to clarify that it applies to all carriers as defined in Iowa Code section 514C.13, including managed care organizations, self-insured plans, and group health plans subject to regulation by the Iowa Commissioner of Insurance.

The entity that performs data matches on behalf of the Department has existing agreements with many carriers. Those agreements will satisfy the data match requirement for both the Medicaid and HAWK-I programs. For a carrier that does not have an existing agreement, the amendment specifies that the carrier shall enter into an agreement with the HAWK-I program on Form 470-4435, HAWK-I Data Use Agreement. The Department is required to identify HAWK-I applicants and enrollees who have other health insurance coverage. Children who have other coverage are not eligible for benefits under the HAWK-I program except in specified circumstances.

This amendment does not provide for waivers because state statute requires carriers to participate in the data match program.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5661B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The HAWK-I Board adopted this amendment on February 22, 2007.

This amendment shall become effective on April 18, 2007.

This amendment is intended to implement Iowa Code section 505.25.

The following amendment is adopted.

Rescind rule 441—86.18(514I) and adopt the following **new** rule in lieu thereof:

441—86.18(505) Health insurance data match program. All carriers, as defined in Iowa Code section 514C.13, shall enter into an agreement with the department to provide data necessary to allow the department to comply with the mandate of Iowa Code section 505.25. Each carrier shall either:

1. Enter into and maintain an agreement with the department on Form 470-4435, HAWK-I Data Use Agreement; or
2. Provide proof of an existing agreement with the department or the department's designee.

[Filed 2/22/07, effective 4/18/07]
[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5772B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby amends Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

The amendments remove supervisor language that is no longer applicable and add language to endorsement provisions to accept National Credentials Registry verification of credentials.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5571B**. A public hearing was held on January 9, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, and no public comments were received. However, the Board identified a need to add several descriptors to the language in Item 3 to correctly identify the applicant and to make the rules consistent with other board rules.

The amendments were adopted by the Board of Behavioral Science Examiners on February 9, 2007.

These amendments will become effective April 18, 2007. These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are adopted.

ITEM 1. Amend subparagraph **31.5(2)“b”(3)** as follows:

(3) Be an alternate supervisor who possesses qualifications equivalent to a licensed marital and family therapist or satisfies the criteria for clinical membership of the American Association of Marriage and Family Therapy (AAMFT). ~~Proposed alternate supervisors must submit an alternate supervision request form;~~

ITEM 2. Amend subparagraph **31.7(2)“b”(3)** as follows:

(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;~~

ITEM 3. Amend rule **645—31.8(154D)** by adopting the following **new** paragraph **“7”**:

7. In lieu of the requirements listed in paragraphs “3” through “5” of this rule, a mental health counselor applicant may provide to the board evidence that the applicant has demonstrated appropriate qualifications at either tier 1 or tier 2 of the National Credentials Registry of the American Association of State Counseling Boards. The mental health counselor applicant shall have the National Credentials Registry of the American Association of State Counseling Boards

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send directly to the board official verification that the applicant has met the qualifications.

[Filed 2/15/07, effective 4/18/07]

[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5775B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby amends Chapter 361, "Licensure of Interpreter for the Hearing Impaired Practitioners," Chapter 362, "Continuing Education for Interpreter for the Hearing Impaired Practitioners," and Chapter 363, "Discipline for Interpreter for the Hearing Impaired Practitioners," Iowa Administrative Code.

The amendments define supervisory requirements for temporary license holders beginning July 1, 2007. These amendments make licensure requirements consistent with recent statutory changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 20, 2006, as **ARC 5615B**. A public hearing was held on January 9, 2007, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. The Board received public comments indicating that the definition of direct supervision of students would be very difficult to implement because of system changes that would be required by school programs, as well as the lack of available interpreters who are currently licensed by examination in this state. The Iowa Code is very specific regarding students who interpret as part of their curriculum so, in response to public comments, the Board removed the definition of "direct supervision of students" proposed in rule 361.1(154E) as well as proposed subrule 361.2(8). In addition, the Board added language to subparagraph 361.2(6)"b"(2) to require license holders to submit to the Board copies of continuing education certificates of completion rather than the original certificates, which is consistent with requirements of the other 18 professional boards that comprise the Professional Licensure Division.

In response to a comment received by the Board, language in new subrule 362.2(2) was removed to more accurately reflect the continuing education requirement for licensees. Parenthetical implementation statutes and implementation sentences also were updated.

The amendments were adopted by the Board of Interpreter for the Hearing Impaired Examiners on February 19, 2007.

These amendments will become effective April 18, 2007.

These amendments are intended to implement Iowa Code chapters 21, 147, 154E and 272C.

The following amendments are adopted.

ITEM 1. Amend rules **645—361.1(80GA,ch1175)**, **645—361.2(80GA,ch1175)**, **645—361.3(80GA,ch1175)**, and **645—361.5(80GA,ch1175)**, parenthetical implementation statutes, by striking "80GA,ch1175" wherever it appears and inserting "154E" in lieu thereof.

ITEM 2. Amend rule **645—361.1(154E)** by adding the following **new** definitions in alphabetical order:

"Active interpreter or transliterator services" means the actual time spent personally providing interpreting or transliterating services. When in a team interpreting situation, the time spent monitoring while the team interpreter is actively interpreting shall not be included in the time spent personally providing interpreting or transliterating services.

"Direct supervision of a temporary license holder" means board review of a temporary license holder's evidence of professional development and continuing educational training or in-person monitoring of interpreting or transliterating services in the same room as the temporary license holder providing those services, as outlined in subrule 361.2(6).

"Supervisor" means a sign language interpreter or transliterator licensed pursuant to Iowa Code section 154E.3 and subrule 361.2(1) who provides on-site evaluations and advisory sessions with a temporary license holder for the purpose of the professional development of that temporary license holder.

ITEM 3. Amend subrule 361.2(4) as follows:

361.2(4) An applicant for licensure who has not successfully completed the board-approved examination set forth in paragraph 361.2(1)"d" ~~by July 1, 2005~~, but has complied with all other requirements in paragraphs 361.2(1)"a" through "c" shall be issued a temporary license to practice interpreting for a period not to extend beyond July 1, 2007 ~~through the end of the then-current biennial license period~~. A temporary license holder may renew a temporary license once, for the immediately following biennial license period.

ITEM 4. Rescind subrule **361.2(5)** and amend and renumber subrule 361.2(6) as follows:

361.2(6 5) An applicant who is issued a temporary license is subject to the same criteria as a licensed interpreter as defined in 2004 Iowa Acts, chapter 1175, Iowa Code chapter ~~chapters~~ 154E and 147 and 645—Chapters 360 and through 364.

ITEM 5. Adopt **new** subrules 361.2(6) and 361.2(7) as follows:

361.2(6) Beginning July 1, 2007, a temporary license holder shall be required to:

a. Provide to the board, by June 30 of each year in which the temporary license is held, demographic, educational and professional study information on a form prescribed by the board; and

b. Meet the requirements of either subparagraph (1) or (2) for the biennial license period:

(1) Provide services under the direct supervision of a sign language interpreter or transliterator licensed pursuant to Iowa Code section 154E.3. Providing such services under this subparagraph requires the temporary license holder during each year of the biennial license period to:

1. Have a supervisor observe the temporary license holder in active practice for no fewer than six consecutive, bi-monthly (a total of six per year) on-site observation sessions at events lasting at least 30 minutes, if the temporary license holder is working alone in providing active interpreter or transliterator services, or at least 60 minutes, if the temporary license holder is working in a team interpreting situation.

2. Attend at least six consecutive, bi-monthly (a total of six per year) advisory sessions with the supervisor for the purpose of discussing the supervisor's suggestions for professional skill development based on the on-site observation sessions. An advisory session may occur immediately following an on-site observation session if the setting is appropriate. The advisory session shall involve only the temporary license holder and supervisor.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

3. Enter into a written agreement with the supervisor in which the temporary license holder and the supervisor agree to the minimum requirements provided in numbered paragraphs 361.2(6)“b”(1)“1” and “2.” The agreement shall be signed and dated by the temporary license holder and the supervisor; shall include the temporary license holder’s and supervisor’s names, addresses and contact information; and shall be provided to the board upon request.

4. Maintain an event log documenting the date, time, length of observation and setting of each on-site observation session and advisory session. The temporary license holder shall ensure that the supervisor places initials beside each event entry to verify the occurrence of the observation or advisory session. This event log shall be provided to the board upon request.

5. Ensure that the supervisor attends both the on-site observation sessions and advisory sessions or reschedules the sessions as necessary to ensure compliance.

6. Comply with the required on-site observation and advisory session obligations. If there is a need to change supervisors for any reason, the temporary license holder shall be responsible for developing a new written agreement with the new supervisor. Changes in supervisors shall not excuse noncompliance with on-site observation and advisory session obligations.

7. Obtain permission from clients as necessary to allow the supervisor to be in attendance during the observation sessions.

(2) Complete during each year of the biennial license period a minimum of 30 hours (3.0 CEUs) of continuing education in areas of professional studies that conform to the requirements of 645—subparagraph 362.3(2)“a”(2). The temporary license holder shall submit to the board copies of certificates of completion issued to the temporary license holder evidencing successful completion of continuing education courses meeting the requirements of 645—subparagraph 362.3(2)“a”(2). Submittal of the copies of certificates of completion does not relieve the licensee of the requirement of providing additional information regarding this continuing education as required in 645—subrule 362.4(2) if the licensee is audited.

361.2(7) As an Iowa-licensed practitioner in accordance with this chapter, a supervisor providing direct supervision of a temporary license holder as provided in subparagraph 361.2(6)“b”(1) is obligated to report to the board interpreters or transliterators who are not practicing in compliance with Iowa law and rules including, but not limited to, Iowa Code chapter 154E and 645—Chapters 360 through 364.

ITEM 6. Amend subrule **361.5(3)**, paragraph “a,” as follows:

a. Meet the continuing education requirements *as provided in 645—subrules 362.2(1) and 362.2(2) or, in lieu of meeting such requirements, provide proof of a current national interpreter certification issued by an organization recognized by the board (e.g., Registry of Interpreters for the Deaf (RID); National Association of the Deaf (NAD); NAD-RID National Interpreter Certification (NIC)) as evidence of meeting continuing education requirements.* A licensee whose license was reactivated during the current ~~renewal~~ *compliance biennial license* period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

ITEM 7. Amend **645—Chapter 361**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 147, 154E and 272C and 2004 Iowa Acts, ~~chapter 1175, sections 426 to 429.~~

ITEM 8. Rescind subrule 362.2(2) and adopt the following **new** subrule in lieu thereof:

362.2(2) Requirements for new licensees. A person licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of the license unless the licensee holds a temporary license and has chosen to meet the requirements for temporary licensure specified in 645—subparagraph 361.2(6)“b”(2). The new licensee shall complete a minimum of 40 hours of continuing education during the biennial license period for each subsequent license renewal and may use continuing education hours acquired anytime from the initial licensing until the second license renewal to meet the requirements for the second license renewal period. A licensee who provides proof of a current national interpreter certification issued by an organization recognized by the board (e.g., Registry of Interpreters for the Deaf (RID); National Association of the Deaf (NAD); NAD-RID National Interpreter Certification (NIC)) meets continuing education requirements.

ITEM 9. Amend **645—Chapter 362**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 272C.2 and Iowa Code Supplement chapter 154E.

ITEM 10. Adopt **new** subrule 363.2(31) as follows:

363.2(31) Failure by a temporary license holder to comply with the requirements of 645—subrule 361.2(6).

ITEM 11. Amend **645—Chapter 363**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 154E and 272C and ~~Iowa Code Supplement chapter 154E.~~

[Filed 2/20/07, effective 4/18/07]

[Published 3/14/07]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.

ARC 5779B

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 1, “Organization and Administration,” Chapter 10, “Reciprocity,” Chapter 11, “Continuing Education,” and Chapter 12, “Fees,” Iowa Administrative Code.

The amendments to Chapter 1 update references to the Board’s official address. The amendment to Chapter 10 adds a reference to a form required by the Board. The amendments to Chapter 11 add requirements for licensees who are in lapsed or inactive status and establish a time limit by which persons returning from active military duty must meet continuing education requirements. The amendment to Chapter 12 implements the correct fee for reinstating an inactive license.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 17, 2007, as **ARC 5660B**. No public comments were received. No changes have been made from the Notice of Intended Action.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

These amendments are intended to implement Iowa Code chapters 543D and 272C.

These amendments will become effective on April 18, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1(2), 1.6(1), 10.2(2), 11.2(5), 11.2(9), 12.1] is being omitted. These amendments are identical to those published under Notice as **ARC 5660B**, IAB 1/17/07.

[Filed 2/22/07, effective 4/18/07]
[Published 3/14/07]

[For replacement pages for IAC, see IAC Supplement 3/14/07.]

ARC 5776B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation, on February 21, 2007, adopted amendments to Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the January 17, 2007, Iowa Administrative Bulletin as **ARC 5655B**.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and, after adoption, the final regulations are again published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or No-

vember, the publication is not actually available in Iowa for several months after that date.

The amendments to the FMCSR and the HMR that have become final and effective since the 2005 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMRPart 173 (FR Vol. 70, No. 235, Page 72930, 12-08-05)

This CFR correction to Section 173.315 requires each pressure relief valve outlet to be provided with a protective device to prevent the entrance and accumulation of dirt and water. The device must not impede flow through the valve and must be designed to prevent the entry of foreign matter, the leakage of liquid and the development of any dangerous excess pressure.

Parts 107, 171, 172, 173, 174, 175, 176, 177, 178 and 180 (FR Vol. 70, No. 236, Page 73156, 12-09-05)

This final rule revises the definitions of "hazmat employee" and "hazmat employer"; revises the shipping paper retention requirements; provides a security plan exception for farmers; adds conditional applicability of postal laws and regulations; and replaces "exemption" with "special permit." Parts 171, 172 and 173 (FR Vol. 71, No. 14, Page 3418, 01-23-06)

This final rule amends requirements in the HMR pertaining to the examination, testing, certification, and transportation of lighters and lighter refills.

Parts 107 and 171 (FR Vol. 71, No. 33, Page 8485, 02-17-06)

The Pipeline and Hazardous Materials Safety Administration (PHMSA) is revising its regulations to reflect revisions to the civil and criminal penalties in the Hazardous Materials Safety and Security Reauthorization Act. In addition, PHMSA is revising baseline assessments for violations related to training and security plans and making editorial changes to the list of frequently cited violations.

Parts 171, 172, 173 and 175 (FR Vol. 71, No. 55, Page 14586, 03-22-06)

This final rule amends the requirements in the HMR for the transportation of hazardous materials by aircraft.

Parts 171, 172 and 173 (FR Vol. 71, No. 79, Page 23869, 04-25-06)

This final rule amends requirements applicable to the transportation of lighter refills, and allows for immediate voluntary compliance with certain provisions. The effective date of this final rule was January 1, 2007.

Parts 171, 172, 173 and 175 (FR Vol. 71, No. 106, Page 32244, 06-02-06)

This final rule revises the transportation requirements for infectious substances, including regulated medical waste, to adopt new classification criteria, new exceptions, and packaging and hazard communication requirements consistent with revised international standards. This final rule also clarifies existing requirements to promote compliance.

Parts 107, 171, 172, 173, 178 and 180 (FR Vol. 71, No. 112, Page 33858, 06-12-06)

This final rule amends the HMR to adopt standards for the design, construction, maintenance and use of cylinders and multiple-element gas containers based on the standards contained in the United Nations Recommendations on the Transport of Dangerous Goods.

Part 393 (FR Vol. 71, No. 120, Page 35819, 06-22-06)

This final rule amends the September 27, 2002, final rule concerning protection against shifting and falling cargo for commercial motor vehicles operated in interstate commerce.

Part 171 (FR Vol. 71, No. 152, Page 44929, 08-08-06)
This final rule revises the definitions of "hazmat employee" and "hazmat employer"; modifies shipping paper

TRANSPORTATION DEPARTMENT[761](cont'd)

retention requirements; and makes other technical corrections as required for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005.

Parts 390 and 392 (FR Vol. 71, No. 166, Page 50862, 08-28-06)

This final rule adopts minor changes to its interim regulations published in the FR in August 2002. Since that time, enforcement officials have discovered many carriers operating without the required operating authority or beyond the scope of their authority. This final rule clarifies that operating authority means registration as required by statute and also assists state enforcement officers in identifying the correct violation and not confusing operating authority with other registration requirements.

Parts 173 and 180 (FR Vol. 71, No. 167, Page 51122, 08-29-06)

This final rule revises the HMR to address a known safety problem with cylinders manufactured of aluminum alloy 6351-T6 and used in self-contained underwater breathing apparatus, self-contained breathing apparatus, and oxygen services.

Parts 107, 171, 172, 173, 175, 177, 178 and 180 (FR Vol. 71, No. 178, Page 54388, 09-14-06)

This final rule corrects editorial errors, makes minor regulatory changes and improves the clarity of certain provisions in the HMR.

Parts 107, 171, 172, 173, 175, 177, 178 and 180 (FR Vol. 71, No. 182, Page 54937, 09-20-06)

This final rule makes minor editorial corrections.

Part 172 (FR Vol. 71, No. 188, Page 56894, 09-28-06)

This final rule corrects an error to an interim final rule that imposed a limited prohibition on offering for transportation

and transportation of primary lithium batteries and cells as cargo aboard passenger-carrying aircraft and equipment containing or packed with large lithium batteries.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

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

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective April 18, 2007.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2005 2006).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 2005 2006).

[Filed 2/21/07, effective 4/18/07]

[Published 3/14/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/14/07.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

* EXECUTIVE ORDER NUMBER TWO

WHEREAS, on Saturday, February 24, 2007, a severe winter storm system moved across the State of Iowa; and

WHEREAS, a proclamation of disaster emergency pursuant to Iowa Code section 29C.6 was issued on February 24, 2007; and

WHEREAS, the State of Iowa has been impacted by this unprecedented storm which has resulted in power outages in much of the state; and

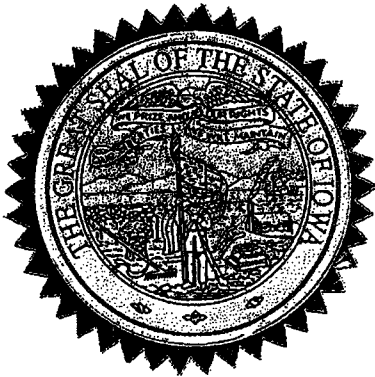
WHEREAS, individual taxpayers who are farmers normally must file and pay their 2006 Iowa individual income tax returns by March 1, 2007 to avoid penalty for failing to make estimated payments; and

WHEREAS, many farmers will be unable to file and pay their 2006 Iowa individual income tax by March 1, 2007, due to these power outages.

NOW, THEREFORE, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me under the laws of the United States of America and under the laws and the Constitution of the State of Iowa, do hereby Order that:

1. The Director of the Department of Revenue shall extend the deadline for individual taxpayers who are farmers to file and pay their 2006 Iowa individual income tax until March 15, 2007.
2. No penalty for failure to make estimated payments will be due for the 2006 Iowa individual tax return if these returns for farmers are filed by March 15, 2007.

This Executive Order is effective immediately.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this 28th day of February, in the year of our Lord two thousand seven.

A handwritten signature in cursive script, appearing to read "Chester J. Culver", written over a horizontal line.

CHESTER J. CULVER
GOVERNOR

ATTEST:

A handwritten signature in cursive script, appearing to read "Michael A. Mauro", written over a horizontal line.

MICHAEL A. MAURO
SECRETARY OF STATE

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